

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF NEW MEXICO

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 VS.

CR. NO. 15-4268 JB

6 ANGEL DELEON, et al.,

7 Defendants.

8
9 VOLUME 1

10 Transcript of Motion to Suppress Proceedings
11 before The Honorable James O. Browning, United States
12 District Judge, Las Cruces, Dona County, New Mexico,
commencing on December 7, 2017.

13 For the Government: Ms. Maria Armijo; Mr. Randy
14 Castellano; Mr. Matthew Beck

15 For the Defendants: Ms. Sara Priddy; Ms. Cori
16 Harbour-Valdez; Mr. Patrick Burke; Mr. Robert Cooper;
17 Mr. Jeff Lahann; Mr. Orlando Mondragon; Mr. John
18 Granberg; Mr. Billy Blackburn; Mr. Scott Davidson;
19 Ms. Amy Jacks; Mr. Richard Jewkes; Ms. Amy Sirignano;
Mr. Christopher Adams; Mr. Marc Lowry; Ms. Theresa
Duncan; Ms. Carey Bhalla; Mr. William Maynard; Mr.
Ryan Villa; Ms. Justine Fox-Young; Mr. Donovan
Roberts; Ms. Lisa Torracco; Ms. Angela Arellanes; Mr.
Samuel Winder

20 For the Defendants (Via telephone): Ms. James Castle
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1 THE COURT: All right. Let's get started.
2 Look around the room. I think we've got everybody
3 that is supposed to be here today. Help your buddies
4 out, make sure that everybody has an attorney.

5 All right. The Court will call United
6 States of America versus Angel DeLeon, et al.,
7 Criminal Matter No. 15-CR 4268 JB.

8 If counsel will enter their appearances for
9 the Government.

10 MS. ARMIJO: Good morning, Your Honor.
11 Maria Armijo, Randy Castellano, and Matthew Beck on
12 behalf of the United States.

13 THE COURT: All right. Ms. Armijo, Mr.
14 Castellano, Mr. Beck, good morning to you.

15 And sitting in for Brock Benjamin and
16 Richard Sindel for Defendant Joe Lawrence Gallegos?

17 MS. PRIDDY: Sara Priddy for Mr. Gallegos.

18 THE COURT: All right. Ms. Priddy, good
19 morning to you. Mr. Gallegos, good morning to you.

20 THE DEFENDANT: Good morning, Judge.

21 THE COURT: And Mr. Gallegos, I understand,
22 through Mr. Benjamin, you consent to Ms. Priddy being
23 your counsel for today and tomorrow.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: I understand Mr. Benjamin had

1 some family member having some surgery, and so
2 something came up really suddenly. Most of the
3 motions we're going to hear today, I don't think
4 directly impact you as well. And I think Mr.
5 Benjamin talked to you about that; is that correct?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. For Defendant
8 Edward Troup.

9 MS. HARBOUR-VALDEZ: Good morning, Your
10 Honor. Cori Harbour-Valdez and Pat Burke on behalf
11 of Edward Troup.

12 THE COURT: All right. Ms. Harbour-Valdez,
13 Mr. Burke, Mr. Troup, good morning to you.

14 THE DEFENDANT: Good morning.

15 THE COURT: And for Defendant Billy Garcia.

16 MR. COOPER: Good morning, Your Honor. Bob
17 Cooper on behalf of Billy Garcia. Judge, Mr. Castle
18 just texted me and says he's getting a busy signal
19 when he's calling in. He would like to be --

20 THE COURT: Is anybody on the line?

21 THE CLERK: I am, Judge.

22 THE COURT: All right. That's Ms. Wild.

23 I don't know, Ms. Standridge, is there a
24 way to check and see what's happening as far as --

25 THE CLERK: Does he have the right call-in

1 number, Judge?

2 THE COURT: Why don't you give me the
3 number so I can give it out.

4 THE CLERK: 505-348-2041.

5 THE COURT: 2041?

6 THE CLERK: Yes, sir.

7 THE COURT: Do you want double-check, Mr.
8 Cooper, and see if he's got the right number.

9 MR. COOPER: 505-348 --

10 THE COURT: -- 2041.

11 MR. COOPER: That is not the number. But
12 we'll get it to him thank you.

13 THE COURT: All right, we'll try it. Good
14 morning, Mr. Cooper, Mr. Castle, Mr. Garcia, good
15 morning to you.

16 THE DEFENDANT: Good morning.

17 THE COURT: All right. For Defendant Allen
18 Patterson.

19 MR. LAHANN: Good morning, Your Honor.
20 Jeff Lahann on behalf of Mr. Patterson.

21 THE COURT: Mr. Lahann, Mr. Patterson, good
22 morning to you.

23 THE DEFENDANT: Good morning, Your Honor.

24 THE COURT: For Defendant Christopher
25 Chavez.

1 MR. GRANBERG: Good morning, Your Honor.
2 John Granberg for Mr. Christopher Chavez.

3 THE COURT: All right. Mr. Granberg and
4 Mr. Chavez, good morning to you.

5 THE DEFENDANT: Good morning, Your Honor.

6 THE COURT: And for Defendant Arturo
7 Arnulfo Garcia.

8 MR. BLACKBURN: Good morning, Your Honor
9 Billy Blackburn and Scott Davidson on behalf of
10 Mr. Garcia, who is present.

11 THE COURT: All right. Mr. Blackburn,
12 Mr. Davidson, Mr. Garcia, good morning to you.

13 THE DEFENDANT: Good morning, Your Honor.

14 THE COURT: For Defendant Daniel Sanchez.

15 MR. JEWKES: Good morning, Your Honor.
16 Richard Jewkes and Amy Jacks representing Daniel
17 Sanchez, who is before the Court.

18 THE COURT: All right. Mr. Jewkes,
19 Ms. Jacks, Mr. Sanchez, good morning for you.

20 THE DEFENDANT: Good morning.

21 THE COURT: And for Defendant Anthony Ray
22 Baca.

23 MR. LOWRY: Good morning, Your Honor. Marc
24 Lowry and Teri Duncan on behalf of Anthony Ray Baca,
25 who is present.

1 THE COURT: All right. Mr. Lowry, Ms.
2 Duncan, Mr. Baca, good morning to you.

3 THE DEFENDANT: Good morning, Your Honor.

4 THE COURT: And for Christopher Garcia.

5 MR. ADAMS: Good morning, Your Honor.

6 Chris Adams and Amy Sirignano on behalf of
7 Mr. Garcia.

8 THE COURT: All right. Mr. Adams, Ms.
9 Sirignano, Mr. Garcia, good morning to you.

10 THE DEFENDANT: Good morning.

11 MR. ADAMS: Thank you, Your Honor.

12 THE COURT: And for Defendant Carlos
13 Herrera.

14 MS. BHALLA: Good morning, Your Honor.
15 Carey Bhalla for Carlos Herrera, with Mr. William
16 Maynard, who is joining us today. And Sonia Salazar,
17 our paralegal.

18 THE COURT: All right. Ms. Bhalla, Mr.
19 Maynard, good morning to you. Mr. Herrera, Ms.
20 Salazar, good morning to you.

21 For Defendant Rudy Perez.

22 MR. VILLA: Your Honor, good morning. Ryan
23 Villa and Justine Fox-Young on behalf of Mr. Perez,
24 who is present in custody. We have with us at our
25 table Ms. Laura Schile. She's our expert.

1 THE COURT: All right. Mr. Villa, Ms.
2 Fox-Young, Mr. Perez, good morning for you.

3 THE DEFENDANT: Good morning.

4 THE COURT: Ms. Schile, good morning to
5 you.

6 And for Defendant Andrew Gallegos.

7 MR. ROBERTS: Your Honor, Donovan Roberts
8 for Andrew Gallegos. With me today is Lisa Torracco,
9 who is joining us.

10 THE COURT: All right. Mr. Roberts, Ms.
11 Torracco, and Mr. Gallegos, good morning to you.

12 THE DEFENDANT: Good morning.

13 THE COURT: And for Defendant Shauna
14 Gutierrez.

15 MS. ARELLANES: Angela Arellanes for Ms.
16 Gutierrez, who is present today.

17 THE COURT: All right. Ms. Arellanes, Ms.
18 Gutierrez, good morning to you.

19 THE DEFENDANT: Good morning.

20 THE COURT: And for Defendant Brandy
21 Rodriguez.

22 MR. WINDER: Good morning, Your Honor. Sam
23 Winder on behalf of Jerry Walz on behalf of Brandy
24 Rodriguez.

25 THE COURT: All right. Mr. Winder,

1 Ms. Rodriguez, good morning for you.

2 And then for Eric Duran, we're going to
3 have some -- is Eric here? Do we have -- is
4 Mr. Duran in the courtroom?

5 MS. ARMIJO: Your Honor, Mr. Duran -- there
6 is a warrant out for his arrest. He's not present.

7 THE COURT: Okay. All right. Let me check
8 my notes. We've got some new counsel and things.
9 We've got Ms. Priddy, Ms. Torraco, Mr. Maynard, and
10 then Ken del Valle will be appearing for Mr. Duran if
11 we get him available.

12 All right. I think that's everything.

13 I did get the opinion entered on Ms.
14 Gutierrez, Ms. Arellanes, so I did get that opinion
15 entered. You may not have seen it because it didn't
16 get entered, I think, till this morning. But it is
17 entered.

18 MS. ARELLANES: All right. Thank you,
19 Judge.

20 THE COURT: So I didn't hear back -- that
21 doesn't mean that you didn't do what I asked you to
22 do -- I didn't hear back through Ms. Wild whether
23 y'all had a new batting order. So presently I'm
24 working on an opinion on Mr. Sanchez' motion to
25 sever, which is a reconsideration motion. So I'm

1 working on an opinion there. If y'all got something
2 better or more pressing or something you want me to
3 reconsider or look at more closely or give you more
4 detailed guidance, let me know. That will give me a
5 little bit of guidance. But that's what I'm working
6 on at the present time.

7 Let's see, we've got a table over here for
8 Mr. Perez and his attorneys.

9 Ms. Wild has worked with you to come up
10 with a batting order to try to use these days as
11 efficiently as possible.

12 My understanding is that the first motion
13 we're to take up today is a suppression motion that
14 was filed by Defendant Carlos Herrera. And so,
15 Ms. Bhalla, are you taking the lead on that?

16 MS. BHALLA: Well, Your Honor, to be
17 perfectly candid with the Court, the conversations
18 that we had would be that the conflict motion would
19 go first, then our motion to continue would go
20 second, and then Mr. Villa was going to start with
21 the motion to suppress lost and destroyed evidence.
22 So that's sort of my -- I think that was our
23 understanding of the batting order.

24 THE COURT: Well, let me -- Ms. Wild,
25 that's an inverted order from what I have. Do you

1 see any problems from a scheduling standpoint in
2 taking the, I guess conflict, motion up first?

3 THE CLERK: No, Judge. And actually there
4 is a note that I gave you; there was an addition, and
5 it didn't reflect it. It looked like to me you'd
6 probably be taking up 4 -- and it's actually 4 and 5
7 first. So that's right, that's what the plan was.

8 THE COURT: Okay. So Ms. Bhalla, do you
9 want to take up -- do you want take up the motion
10 regarding attorney conflict first, or your motion
11 to -- I've already taken care of, I think, appointing
12 another counsel, Mr. Maynard. So I guess it would be
13 then the motion to continue portion of that. Do you
14 want to take that up first or the attorney conflict
15 first?

16 MS. BHALLA: Your Honor, I wasn't raising
17 the attorney conflict motion. That was Mr. Lowry's
18 motion.

19 THE COURT: No, but I was going to you to
20 look at the order. And you said that y'all had an
21 agreement on order. So which one do you want to take
22 up first?

23 MS. BHALLA: Oh, I'll defer to Mr. Lowry on
24 that, Your Honor.

25 THE COURT: Do you want to go then?

1 MR. LOWRY: Well, Your Honor, it's the
2 United States' motion, but I very much appreciate if
3 we could address this first. They filed a written
4 pleading on Monday. I haven't had an opportunity to
5 respond in writing. But I think I'm ready to proceed
6 on my feet, if you will, and to file a written
7 pleading, you know, over the weekend, if necessary.
8 But I'm prepared to argue it today. But it's,
9 obviously, not my motion. It's the United States'
10 motion.

11 THE COURT: Do you want to take it up at
12 this time, Mr. Castellano?

13 MR. CASTELLANO: Yes, Your Honor. That was
14 our understanding of the order as well.

15 THE COURT: Okay.

16 MR. CASTELLANO: The conflict motion would
17 go first, and the motion to continue would be second.

18 MS. HARBOUR-VALDEZ: Your Honor, I'm sorry
19 to interrupt, but I'm getting messages from the folks
20 on the phone that they can't hear anyone except you.

21 THE COURT: All right. So folks, you've
22 got to speak into the microphone so the people on the
23 phone can hear. I guess I probably need to know who
24 all is on the phone. I know Ms. Wild. And I guess
25 Mr. Castle is on the phone; is that correct, Mr.

1 Castle?

2 MR. CASTLE: Yes, Your Honor.

3 THE COURT: Who else is on the phone?

4 MS. HARBOUR-VALDEZ: Your Honor, our
5 paralegal, Raquel Rodriguez, is also on the call.

6 THE COURT: Okay. Anybody else on the
7 phone?

8 All right. Mr. Castellano, if you wish to
9 argue the conflict motion.

10 MR. CASTELLANO: Yes, sir. Thank you.

11 Last week, you kind of hinted that the
12 timing of this motion -- and what I can tell the
13 Court is that this came up, I think, two weeks ago
14 now, as I was reviewing discovery for the next set of
15 disclosures. And one of the items in the discovery
16 was STIU file of Eric Duran. As I looked through
17 that file, there were a couple of documents in there.
18 And one of them indicated that he said that Mark
19 Donatelli was his attorney. That was the first time
20 I had seen that.

21 And then somewhere else in the discovery
22 there was also a paycheck or a check, and it was also
23 written to attention of Mark Donatelli. And so, once
24 that happened, we inquired of Mr. Lowry whether or
25 not he knew or believed there was any conflict as it

1 related to his firm's representation of Eric Duran.

2 Eric Duran is a cooperator in this case.

3 The Court has heard a few times that he has recorded
4 some of the defendants, including Mr. Baca. So one
5 of the issues we'll have to address is whether or not
6 the prior representation and the current
7 representation create a conflict, since part of the
8 defendants will be attacking Eric Duran, who will be
9 a witness for the Government and against Mr. Baca
10 among others.

11 THE COURT: Could you elaborate? Maybe Mr.
12 Lowry is prepared to elaborate on what that prior
13 representation was. What was the Rothstein firm
14 representing Duran on?

15 MR. CASTELLANO: I'll give my limited
16 understanding. And I think Mr. Lowry will be better
17 at focusing on that, Your Honor. But my
18 understanding was that Mr. Duran had a lawsuit
19 against the Corrections Department.

20 THE COURT: So it was a civil suit?

21 MR. CASTELLANO: That's my understanding.

22 THE COURT: And I assume it was probably in
23 the nature -- not of a 2254, or anything like that,
24 habeas; it was something to do with his corrections
25 facility?

1 MR. CASTELLANO: That's my understanding.
2 It may have been a suit against corrections guards
3 themselves. And so the firm represented him while he
4 was an inmate at the facility. And there is
5 another -- that's the first issue.

6 THE COURT: Do you know any more about the
7 suit than that?

8 MR. CASTELLANO: No, I know very little
9 about the suit. Only that he indicated that Mr. --
10 we may have a copy of the complaint, Your Honor.

11 THE COURT: You don't have --

12 MR. CASTELLANO: We may have a copy.

13 THE COURT: You do.

14 MR. CASTELLANO: What I've just been handed
15 is a complaint for damages for deprivation of civil
16 rights and for supplemental state law claims, Civil
17 No. 01-14 -- I can't tell if there is another 1,
18 WWD/DJS. And in that, apparently what happened was
19 some guards were alleged to have beat up Mr. Duran in
20 the facility. He filed suit and the suit was
21 dismissed after there was a settlement in the case.
22 And the Donatelli firm represented him as a prisoner
23 at the facility.

24 THE COURT: So the guards allegedly beat up
25 Mr. Duran?

1 MR. CASTELLANO: That's my understanding,
2 Your Honor, yes.

3 THE COURT: Is there any discussion in the
4 complaint, just perusing it, that SNM was involved;
5 that that was an issue at all in that case? Was it
6 at all SNM related?

7 MR. CASTELLANO: I'm looking at it right
8 now, Your Honor. So I'm just kind of skimming it.
9 It's a 28-page document. When I sit down I can give
10 it a closer look, but as I'm looking through this,
11 obviously, at the time Mr. Duran was an inmate. And
12 so I'm only speculating here, in the context of the
13 representation, assuming there would have been
14 discussions about his status as an inmate, which
15 could have touched on his status as a gang member,
16 that I'm not sure of. I don't know about the
17 communications between counsel and Mr. Duran. And
18 there is --

19 THE COURT: What is -- let me ask you this:
20 Given what you know about the case, would you say
21 that that civil lawsuit is the same case as this one?

22 MR. CASTELLANO: Well, I think, given the
23 nature of the racketeering enterprise, I think it
24 certainly could be. Because if he is viewed as an
25 SNM Gang member, or was housed with the SNM Gang

1 members, then that would certainly touch on it. And
2 so the answer is I think it could be.

3 THE COURT: So it's not that you see an
4 actual conflict at this time? You're seeing this as
5 more of a potential conflict?

6 MR. CASTELLANO: Certainly a potential
7 conflict. I'd have to think more about the actual
8 conflict. Because once again, I don't know of the
9 communications between Mr. Duran and the Donatelli
10 law firm in terms of how much of the overlap was with
11 his status as an SNM member or associate in the
12 context of being an inmate at the facility.

13 THE COURT: You know, that's -- I'm having
14 a harder time with this one saying that it's the same
15 or related case. It seems to me that most of your
16 briefing went off on the confidential information
17 prong of that, rather than in -- like in Mr. Davis'
18 situation, where I went off more on the same or
19 related case, given that murder is going to be used
20 by the Government to prove enterprise and
21 racketeering activity.

22 MR. CASTELLANO: I agree. I think the
23 murder certainly was stronger in terms of raising the
24 conflict issue. So what we're going to have here is
25 really a lot of it's going to be based on the

1 communications between counsel and Mr. Duran, and
2 whether or not any conversations that were gained or
3 any information gained from the law firm can be used
4 in cross-examination. And so a lot of that is going
5 to be based on communications between counsel and
6 Mr. Duran.

7 THE COURT: Do we know at all about whether
8 Mr. Duran is willing to waive any conflict here?

9 MR. CASTELLANO: We don't, Your Honor. And
10 as part of the motion, we've asked that counsel be
11 appointed to him so someone else independent can have
12 a conversation with him.

13 THE COURT: And I have appointed Ken Del
14 Valle to do that. But we don't know where any of
15 that stands?

16 MR. CASTELLANO: No. There is an
17 outstanding warrant for Mr. Duran's arrest. And so
18 at this time, until he's apprehended, no one will
19 have a chance to meet with him to discuss the
20 conflict issue.

21 THE COURT: That's not much of a
22 cooperating witness, is it?

23 MR. CASTELLANO: Not right now. He's
24 taking a little time off right now.

25 THE COURT: He's the only one?

1 MR. CASTELLANO: Right. And if you're done
2 with this, there is actually a second issue which
3 came up. So, in the context of asking about this
4 lawsuit, Ms. Armijo asked counsel for the Department
5 of Corrections whether this is the same Duran from
6 the Duran Consent Decree. And it's not the same
7 person. And that was, I believe, Dwight Duran.

8 But this is an issue I discussed with Mr.
9 Lowry probably a year ago. And it didn't seem to be
10 an issue at the time. And the discussion was related
11 to the Donatelli law firm's representation or
12 oversight of the Duran Consent Decree. And so the
13 consent decree was a class action. And all the
14 inmates I believe in Level 3 or above were considered
15 members of the class. So most of the consent decree
16 was pretty much finished and resolved. Mr. Lowry, I
17 think at that time, also believed the litigation had
18 resolved. So we thought it was a past issue.

19 When this came up with counsel,
20 Mr. Brewster, from the Department of Corrections, he
21 indicated that the consent decree has been revived in
22 the last couple of years, and there has been ongoing
23 litigation including the Donatelli law firm. Some of
24 the litigation, as I understand it, is related to the
25 rules on how many people can be housed together and

1 how much square footage is permitted for housing
2 prisoners. And the other -- I think it has to do
3 with recreation rooms and game rooms. But there has
4 been ongoing litigation.

5 So in that context the Donatelli law
6 firm -- I discussed this with Mr. Lowry this week --
7 he's aware of the issue. So their firm, in essence,
8 potentially represents all defendants in this case,
9 due to the consent decree because they are
10 potentially members of a class. So --

11 THE COURT: Where is that case, though? I
12 thought that case had been terminated.

13 MR. CASTELLANO: That's correct, Your
14 Honor. Most of that case, I believe, has been
15 terminated. Except, like I said, in the last couple
16 of years, it's been revived in a couple of areas
17 related to housing of prisoners and use of day rooms
18 and, I think, recreation rooms.

19 THE COURT: Who has that case? What
20 federal judge has that case?

21 MR. CASTELLANO: I don't know. I only know
22 that the Department of Corrections is involved, and
23 the Donatelli firm is involved, and I think a couple
24 of other firms are involved in the oversight of the
25 remaining litigation. So, apparently, it's alive and

1 well.

2 So the other question we have to answer is
3 whether or not that creates other conflicts, because
4 the Donatelli firm, in essence, could represent any
5 member of the class, which could be any of the
6 individuals in this courtroom or any cooperators who
7 were housed in Level 3 or above, which would probably
8 be everybody.

9 So the other issue we have there is whether
10 or not there are conflicts, whether or not the firm
11 has represented these people, which I think they have
12 as part of the class, and whether or not they've had
13 discussions, including confidential discussions, with
14 anyone in this case; that would be defendants and
15 cooperators who have not been charged.

16 So it may be an issue we have to look into
17 further. It may be that the firm has to go through
18 its records and see whether or not it's interviewed
19 anybody in this case as part of that representation.
20 But, in essence, they represent anyone in custody, I
21 think, at Level 3 or above.

22 THE COURT: All right. Anything else, Mr.
23 Castellano?

24 MR. CASTELLANO: Not right now, Your Honor.
25 I will look through this complaint a little bit more

1 when I have time, and if anything else comes up, I'll
2 let the Court know.

3 THE COURT: Well, I certainly should let
4 everybody know I'll have to give this some thinking
5 myself. Of course, I was Deputy Attorney General
6 representing the State during the time of the Duran
7 Consent Decree, so I was attorney for the State
8 during that period of time. I don't know if that
9 creates any problems or not.

10 Ms. Standridge just told me that Duran is
11 assigned to Judge Gonzales. So I guess you're right.
12 I thought the thing was long over. But I did some
13 work on that myself when I was state attorney. So we
14 need to keep that in mind.

15 All right. Thank you, Mr. Castellano.

16 MR. CASTELLANO: Thank you, Your Honor.

17 THE COURT: Anybody else want to weigh in
18 on this before I hear from Mr. Lowry?

19 All right. Mr. Lowry.

20 MR. LOWRY: Good morning, Your Honor.

21 Thank you.

22 THE COURT: Mr. Lowry.

23 MR. LOWRY: Your Honor, I have -- well, let
24 me get right to the point. When we were initially
25 assigned representation in this case for Mr. Baca, we

1 had no inclination whatsoever that Eric Duran was
2 involved whatsoever.

3 And it wasn't until the first -- what I
4 would call the real substantive discovery production
5 by the United States on March 25, 2016, that my
6 colleague, Teresa Duncan, started plowing through
7 discovery, as she's prone to do. And during that, we
8 looked at the confidential recordings from the a/k/a
9 Ironman. And it was pretty quickly ascertained by
10 Ms. Duncan who the real identity of Ironman was. And
11 she determined that it was Eric Duran. So she did
12 what a methodical defense attorney did --

13 THE COURT: That Mr. Duran has never been a
14 party to any of the SNM cases that I have; correct?

15 MR. LOWRY: Not to my knowledge, Your
16 Honor, unless there is a sealed pleading -- of which
17 there are many that I'm unaware -- but, to my
18 knowledge, he is not.

19 So, in the context of her research, Ms.
20 Duncan came across press reports regarding this civil
21 case. And she immediately contacted me. And we
22 immediately contacted Mr. Donatelli to set up a
23 firewall. And our thinking at the time was: This
24 was a civil case that was completely unrelated to the
25 SNM matter.

1 And I have, Your Honor, since the filing of
2 this motion, in talking about it with opposing
3 counsel last week, just looked at the publicly
4 available material in this case. And we ordered the
5 transcript.

6 These aren't allegations, by the way. The
7 reality of this case was -- and this is what I've
8 learned from publicly available information, because
9 Mr. Donatelli and I really haven't spoken about it --
10 that Mr. Duran was a resident of Hobbs, in the Lea
11 County Correction Facility there, and went to the
12 dining hall with about 30 other inmates. And one of
13 the correctional officers assigned him a seat, unlike
14 anybody else in the dining hall. Mr. Duran took
15 offense to that, and there were words exchanged,
16 which ended up with the correctional officer telling
17 him he was going to return to his cell and he had
18 forfeited his right to have lunch.

19 That caused a little bit of ill will. And
20 Mr. Duran said, No, I'm going to go get another tray
21 because the guard had discarded the first tray, the
22 lunch tray. And he went and stood back in line. The
23 guards, at that point, extricated him out of the room
24 and took him to a hallway where approximately --
25 according to the criminal complaint that was filed

1 against the guards -- proceeded to handcuff him
2 behind his back, put him prone on the floor and
3 kicked -- two guards, one on each side, kicked his
4 head repeatedly, for which there was a criminal
5 complaint filed against three guards.

6 One pled guilty, cooperated with the United
7 States. And the Department of Justice, Barbara
8 Bernstein, prosecuted three guards who didn't plead
9 guilty and got guilty verdicts on all three. So
10 there were four convictions.

11 So there is no allegations -- this is
12 proven fact -- that the correctional officers with
13 the Department of Corrections beat the stuffing out
14 of Eric Duran. And it didn't involve any
15 gang-related activity at all. It's just about a
16 kerfuffle that happened in the dining hall.

17 Now, we've looked -- and I have, Your
18 Honor -- we've looked at the transcript that's
19 available in that case. I can mark them as exhibits.
20 We have the opening statements, all of Duran's
21 testimony, and the closing statements for the Court.
22 I will mark them today and tender them as Exhibits A,
23 B, and C.

24 But the only reference of gang activity at
25 all in that case was in the criminal case -- not the

1 civil case, but the criminal case -- was the United
2 States, Barbara Bernstein, when they were putting on
3 Mr. Duran, had an oral motion in limine in front of
4 the Court, and said: Whatever these guards are going
5 to do with their defense, we want to make sure that
6 they're not going to say that this -- they were
7 afraid there was going to be a gang incident in the
8 cafeteria that led them to Mr. Duran. And the
9 criminal defense attorneys agreed that gangs weren't
10 at issue in that case at all. And so that's the only
11 time gangs were mentioned. And it wasn't
12 SNM-specific. It was generic, and --

13 THE COURT: It was a motion in limine to
14 keep it out of the trial?

15 MR. LOWRY: Yes. And they just didn't want
16 the defendants, the correctional officers, trying to
17 curry favor with the jury saying that this guy was
18 affiliated with gang X, whatever it was.

19 At the time, it strikes me as odd because,
20 as we all know, the Department of Corrections had
21 made specific housing assignments related to the SNM,
22 and that never was the Hobbs facility or the Lea
23 County Correctional Facility. We all know that
24 that's been Southern for some years.

25 So there is no objective indication at all

1 that this was SNM-related. In fact, all of the
2 objective evidence indicates that this was not gang
3 related at all; that this was just an altercation.

4 And if you look at the trial transcript in
5 its totality -- and the Court can take judicial
6 notice of the trial transcript as part of the Court's
7 records, but I'll mark these as A, B, and C. This
8 was really about the guards -- at that time Wackenhut
9 had just opened that facility; they had just taken it
10 over. There was a lot of push-back about them being
11 ineffective caretakers of the facility because there
12 was a widespread feeling that the guards didn't
13 really control the facility and the guards were
14 trying to demonstrate who was boss, so to speak. So,
15 when they ran across an uppity inmate in the
16 institution, they were going to be determined to set
17 the record straight and show who was in charge.

18 That didn't work out so well, because there
19 were four criminal convictions on the COs as a result
20 of that. But it wasn't gang-related at all.

21 So that's what I know today.

22 Frankly, back in March of last year, we
23 just had a couple of press reports that I shared with
24 opposing counsel.

25 But at the time, we did what I consider to

1 be double duty. We said: Mr. Donatelli, don't talk
2 about this case with us, ever. And between Ms.
3 Duncan and I, we said she would handle Eric Duran as
4 a witness, and I would not, because of the firm's
5 prior representation of Mr. Duran.

6 So at the time we really thought that, you
7 know, we had done due diligence at -- A, we'd made a
8 determination that this case wasn't substantially
9 related to this case; that no conflict actually
10 existed. But, as a prophylactic measure, we wanted
11 to double down and make sure we did the right thing.
12 So we assigned Ms. Duncan the honor of handling the
13 Duran witness, and having Mr. Donatelli refrain from
14 ever talking about this.

15 Now, I want to back up for a second because
16 it bears repeating. I did a little research after
17 your opinion came out on Sunday. I think it's
18 important for the Court to understand the physical
19 dynamic of the firm. A, this case had come -- was
20 litigated and had been resolved; the settlement
21 agreement was reached September 18 of 2012. I didn't
22 join the firm until September of -- well, pardon me,
23 not 2012, but 2002. I joined the firm in September
24 of 2003. So this case had been mothballed by the
25 time I took employment with the firm.

1 But more importantly, is that Mr. Donatelli
2 has always worked and lived in Santa Fe -- out of the
3 Santa Fe office of the Rothstein Law Firm. And since
4 day one I've always lived and worked in the
5 Albuquerque office of the Rothstein Law Firm in
6 Albuquerque, New Mexico. This is important, because
7 I think a lot of the Rules of Professional Conduct
8 with imputed conflicts and these kinds of things
9 really imagine lawyers in the same firm sharing the
10 same filing cabinets, talking about the case over the
11 water cooler break, at lunch, whatever. And the
12 reality of this case is that, for a number of years
13 with the firm, I've rarely, if ever, saw Mark
14 Donatelli -- maybe two or three, half a dozen times a
15 year, and just at social functions. So there is no
16 pipeline, electronic or otherwise, between the
17 Albuquerque office and the Santa Fe office, where we
18 can share files. Unfortunately, even with the
19 internet, even today, we don't share files between
20 the offices. So the commingling of information just
21 wasn't possible, and in fact, never happened. So I
22 just want to bring that to the Court's attention so
23 you could understand that, obviously, one of the
24 rules of professional conduct is concerned acutely
25 with how confidential client information is handled.

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1 And I never had access to -- either before we became
2 aware of this or after, except for what I've just
3 done in preparation for this -- defending this motion
4 in reality. So that's important for the Court to
5 understand.

6 So we've analyzed this as the case is
7 fundamentally not a conflict, because this civil case
8 is just not substantially related to this present
9 RICO case at all. And I can say that with a high
10 degree of confidence, having reviewed the civil
11 complaint. And I have a copy I'll tender as Exhibit
12 D. And having reviewed -- not completely, because
13 the trial transcript is about approximately 1300
14 pages long -- but I have reviewed the openings and
15 closings and the Eric Duran testimony. And there was
16 just no real issue about gang involvement, in
17 general. More specifically, there is absolutely no
18 mention of SNM throughout the case. I had a
19 paralegal do a word search, once we PDF'd the trial
20 transcript, and we can't find any reference under SNM
21 at all.

22 So I just don't think there is a conflict,
23 because I don't think the cases are substantially
24 related, as the Rules of Professional Conduct
25 contemplate.

1 Which brings us to the second part of the
2 analysis. Because, as you know through your opinion,
3 there is two parts: Where the case is substantially
4 related, and then what do we do about the
5 confidential information?

6 And with regard to the confidential
7 information, like I said earlier, there is really no
8 overlap between my office and Mr. Donatelli's office.
9 Although, if we take the rule as logical extreme, one
10 could argue that that's irrelevant.

11 But what I would suggest, Your Honor, that
12 if you look at Rule 109(c), which is really talking
13 about representation of current clients, vis-a-vis
14 former clients, and how you handle confidential
15 information, there is exceptions where that
16 information has become more available, or there is a
17 waiver on behalf of the former client.

18 And I think that's important here, Your
19 Honor. And I want to point the Court to the
20 Government's actual motion. And when the Government
21 raised this last week -- and I've worked as
22 transparently as I can with my colleagues on the
23 other side of this case to explain to them my role,
24 how the firm functioned. Last week, they even took a
25 picture of me to send to Mr. Duran, to see if he

1 recognized me. To my knowledge, he didn't ever
2 recognize me, which is not surprising, because I
3 wasn't at the firm at the time.

4 And when we were in the hall speaking with
5 Ms. Wild, Ms. Armijo had mentioned to me that, Well,
6 of course, you have a problem with confidential
7 information because Mr. Duran would have talked to
8 Mr. Donatelli about his drug dealing for the SNM.
9 And at the time I said, Well, that's pretty
10 remarkable, because this is the first I've heard
11 about it from you, the prosecutor for the United
12 States. And that sentiment is repeated at page 2 of
13 Document 1534, at the bottom of the page in the
14 motion. It says, "It is believed during the course
15 of this representation, Duran discussed his prison
16 activities, to include illegal drug activity at a
17 minimum." And that sentiment is carried over into
18 Footnote 7, which says, "Assume Duran testifies at
19 trial, Duran would likely be cross-examined about his
20 involvement as an SNM inmate and member. During his
21 representation of Duran, Mr. Lowry's firm dealt with
22 that very issue."

23 Well, Your Honor, I'm just going to submit
24 to the Court that the only way my colleagues on the
25 other side of this case could know of anything like

1 that -- which I have no idea whatsoever -- is if they
2 consulted with Mr. Duran about it. And if they
3 consulted with Mr. Duran about it, Mr. Duran has
4 waived his attorney-client confidences that he had
5 with Mr. Donatelli. And it bears repeating again. I
6 know nothing about what those confidences were. But
7 it strikes me as a bit ironic that the United States
8 knows more about those confidences than I do. And
9 they're saying that I have a conflict.

10 In preparing for this motion, we did talk
11 to Mr. Donatelli. He's available, but not until
12 after lunch, if Your Honor wants to talk to him about
13 the nature of his representation. He's at the ADX
14 taking some death penalty teams through the facility
15 this morning. But what he did tell me -- and you'll
16 see this in the exhibit -- that there is a Barbara
17 Bernstein, who was the Department of Justice attorney
18 out of Washington, D.C., who prosecuted the three
19 guards who wouldn't plead guilty, and that they
20 worked very closely together throughout the duration
21 of the criminal case and the civil case. And my
22 understanding is, without going into any detail at
23 all, is -- Mr. Donatelli told me yesterday -- that
24 there was nothing that he knew that Ms. Bernstein
25 with the Department of Justice didn't know.

1 And so, again, I'm just coming back to this
2 idea that to the extent there could be any
3 confidential information imputed to me, that's
4 information that the client waived by sharing it all
5 with the Department of Justice.

6 THE COURT: Well, are you relying, then, on
7 waiver rather than on --

8 MR. LOWRY: Well, Your Honor, it's a
9 two-for. I'm saying I didn't have any, as a
10 practical matter --

11 THE COURT: But you and I talked at the
12 last hearing -- I don't have the number in front of
13 me -- about the fact, on this issue, it seemed to me,
14 just looking at the rules in connection with the
15 Davis motion, that any sort of information that the
16 firm has is imputed to all members of the firm. So
17 we can't -- we wouldn't be able to take a practical
18 approach, and say, Well, this attorney doesn't have
19 it and this one does. It's imputed to the firm and
20 all the attorneys in the firm.

21 MR. LOWRY: And I -- well, let me take a
22 step back before I jump into that pool too deeply.
23 And I think Your Honor struck the right cord in the
24 Davis opinion, which is, really at the first cut at
25 examining and analyzing the confidential information

1 is really an objective inquiry. And this is set out
2 in the Committee Commentary No. 3 of Rule 16-109.
3 And I'm going to quote from the rule. And it says,
4 quote, "A conclusion about the possession of such
5 information may be based on the nature of the
6 services the lawyer provided the former client and
7 the information that would in ordinary practice be
8 learned by a lawyer providing such services."

9 What that standard does is really focus us
10 back to the original civil suit, and say, jeez, if
11 I'm representing a prison inmate in a personal injury
12 case, does that really necessitate me making an
13 inquiry into his drug dealing habits for any
14 particular gang?

15 And I think, Your Honor, the appropriate
16 analysis is: Well, no. There is nothing objective
17 about the civil suit, which is, you know, a half a
18 dozen or so guards kicking in Mr. Duran's head, that
19 had anything to do with gangs, drug dealing, or
20 anything. There was just the opportunity to share
21 that kind of information never availed itself, if you
22 look at the cases objectively.

23 And so I would argue to the Court that we
24 really don't need to get deep into the weeds of what
25 confidential information was provided to Mr.

1 Donatelli, because an objective analysis indicates
2 that there would have been none. That would be my
3 first argument.

4 Then my second argument would be, Your
5 Honor, as you pointed out, that if there was
6 confidential information about drug dealing or SNM
7 Gang-related activities, I'm certainly not aware of
8 it. And the fact that Ms. Duncan is available to
9 handle this means that any imputed knowledge that I
10 could possibly have under Rule 16-110 is not relevant
11 to Ms. Duncan's handling of this particular witness.
12 So, I mean, I think that's a factor the Court needs
13 to consider, as you're well aware. Even if you think
14 there is a potential conflict or an actual conflict,
15 alternative measures to remedy that conflict are
16 relevant to the analysis. In here, we have a ready,
17 willing and able attorney that's not
18 conflict-burdened at all, no matter how you slice it
19 or dice it, available, and who has handled
20 Mr. Duran's file and investigation from the
21 beginning. And so I just -- I don't think it ripens
22 into a cause that the Court needs to be concerned
23 about.

24 Now, this spirals into the fact, as the
25 United States just conceded, Mr. Duran is a fugitive

1 from justice. He's absconded. I mean, he's not even
2 available. We don't know what his position is.

3 The fact of the matter is, Mr. Duran has a
4 very colorful history of doing precisely this. His
5 first adult conviction, in 1997, was for aggravated
6 burglary and forgery. And the court in Clovis tried
7 to remedy his initial felonious nature with drug
8 treatment. And he walked away from drug treatment in
9 early 1998, and absconded.

10 The Court should know that when he was
11 located in Portales, in June of 1998, the officers
12 detained him, put him in a police car, and somehow he
13 got into the driver's seat of the police car. And
14 when the police tried to apprehend him from driving
15 away, he drug a police officer about 30 or 40 feet,
16 and the police officer discharged his service weapon
17 about eight times at the departing car. And
18 Mr. Duran got away.

19 So he's not the type of individual who is
20 going to walk in freely, and you know, renew his
21 cooperation with the United States.

22 I mean, at this point, Your Honor, I'm not
23 convinced that we will have Mr. Duran available for
24 trial. So, if Mr. Duran is not here, obviously,
25 there is no need to cross-examine him in any event,

1 and then there is no conflict. So I mean, that's
2 just in Mr. Duran's nature.

3 Then finally, Your Honor, I've asked my
4 colleagues -- and I cooperated with them in good
5 faith to the extent I could, and I've asked them, and
6 we've asked in Brady, and explicitly and otherwise in
7 Document 1053 and in our other motion to compel that
8 we just heard at the beginning of this month, for the
9 CI contracts and the information related to
10 Mr. Duran, that still haven't been filed.

11 And the reason I would like to see them --
12 and if I could put this up on the Elmo, Your Honor --
13 and I realize these aren't quite compatible. But
14 this is a cooperation agreement that the United
15 States just entered into with Michael Flynn. And I'm
16 certainly not trying to put them on equal pedestals
17 here. But if you'll see, in paragraph 8 of Mr.
18 Flynn's agreement, the United States demanded that:
19 "Your client shall cooperate fully, truthfully,
20 completely and forthrightly with this office and
21 other federal, state, and local law enforcement
22 authorities identified by this office in any and all
23 matters to which this office deems cooperation
24 relevant." And I'm almost positive that such an
25 agreement would have attached to Mr. Duran's

1 cooperation in this case, given that the United
2 States has compensated him in over \$45,000 worth of
3 United States' funds. I just don't think that that's
4 a sum of money that escaped the Department of
5 Treasury coffers very lightly, without a similar type
6 of agreement.

7 And this is where I'm talking about waiver;
8 that Mr. Duran has gone to the United States, has
9 told them everything he knows. And that there is no
10 confidential information with regard to his SNM
11 activities, A, that could be imputed to the firm,
12 but, B, that could be imputed to me, in this
13 roundabout way, to establish even a potential
14 conflict, much less an actual conflict, Your Honor.

15 So I just come back to the central point
16 that there is no conflict in this case. The matters
17 aren't substantially related. And to the extent one
18 could even ever assume, if you got into -- not an
19 objective analysis, but a substantive analysis to
20 find out what Mr. Duran told Mr. Donatelli -- that
21 that type of information has been waived.

22 Your Honor, with regard to the Duran
23 Consent Decree, I would just say that -- again, these
24 cases aren't substantially related -- my
25 understanding is that the current iteration of the

1 consent decree is that the Department of Corrections
2 had signed a permanent order with the court that the
3 Department of Corrections would not use public
4 facilities, meaning gymnasiums, open rooms, that kind
5 of thing, to house inmates, and the inmates wouldn't
6 be sleeping on boats in gymnasiums and other types of
7 public spaces. And I don't claim to know the details
8 of that. I think we could all look at the court
9 docket and get a better feel for it. But the idea
10 that Mr. Donatelli, or his successor at the firm, is
11 looking at the sleeping arrangements of Department of
12 Corrections' inmates, I just really don't see the
13 overlap or the dovetail here.

14 Again, if you look at the case objectively,
15 there is no real reason for anybody to share the type
16 of information about gang activities or drug dealing
17 activities or murders or homicides or witness
18 intimidation or any of the type of activities that
19 are alleged in the indictment. I mean, none of those
20 activities are related to where he slept last night.
21 I mean, they're not related to how good is the
22 medical providers at your facility.

23 So, Your Honor, I'm not saying the Court
24 shouldn't be concerned about it. I think the Court
25 will do an exacting analysis of it, as it did in

1 Mr. Davis' case. But I think that the allegations
2 that these cases warrant the disqualification of
3 myself because of confidential information being
4 shared has been amply remedied by Ms. Duncan, taking
5 Duran from the onset, as soon as we identified him;
6 firewalling Donatelli out of this case completely.
7 And with regard to Mr. Duran, I'm just the fifth
8 wheel, so to speak.

9 So, if the Court has any questions for me,
10 I'm happy to answer them.

11 THE COURT: My law clerk has given me a
12 copy of the Duran case, the one involving Eric Duran.
13 I'm looking at the list of defendants here in this
14 case. Of course, Robert Perry, the Secretary, I know
15 him; I've known Mr. Perry for a long time.

16 It also has John Shanks, who is Rudy Perez'
17 expert.

18 Any thoughts about that?

19 MR. LOWRY: Is that the Duran case?

20 THE COURT: Yeah. You're suing Mr. Perez'
21 expert.

22 MR. LOWRY: Your Honor, honestly, if it
23 causes the Court any concern, I believe that's why I
24 wanted to get this matter before the Court as soon as
25 possible. I'm happy to go back and do a fine-tune

1 analysis of that, and compare the involvement of any
2 witnesses with the record here.

3 But it doesn't give me -- at this moment,
4 no, I don't have any reason to be concerned about it
5 because, frankly, I'm vastly ignorant about why
6 Mr. Shanks or anybody else would have been sued and
7 what their role was in the case. So, unfortunately,
8 I'm not in a position to give the Court any
9 meaningful guidance on that.

10 THE COURT: All right. Let's get your
11 exhibits marked; see if there is any objection from
12 Mr. Castellano about them. I have a copy of the
13 complaint. That doesn't mean that I've got a
14 complete one with all the exhibits and everything.
15 So give me whatever you've got. And, Mr. Castellano,
16 give me whatever you've got.

17 MR. CASTELLANO: Your Honor, if you have
18 the complaint, you have what I have. And there is no
19 objection to the admission of defendant's exhibits.

20 The only other question I would ask related
21 to the representation for the consent decree is, for
22 example, in terms of confidential communications, the
23 attorney might ask the defendant why he's classified
24 at Level 4, 5, or 6, and this could relate to them
25 being a gang member. And I don't know the answer to

1 that question. Their firm would. So that still
2 remains to be seen in terms of who they may have
3 interviewed or spoken with, who is a part of this
4 case.

5 THE COURT: I marked up my copy. Do you
6 have a clean copy of the complaint, Mr. Lowry?

7 MR. LOWRY: I do, Your Honor. I have a set
8 for everybody here.

9 THE COURT: Why don't you identify for the
10 record what you're about to give to the Court.

11 MR. LOWRY: I will, Your Honor.

12 Your Honor, I'm about to hand to the Court
13 exhibits that I've marked A through D. Exhibit A is
14 Volume 2; it's a partial trial transcript of the
15 criminal case. It is criminal number 01-CR-593. It
16 was in front of Chip Johnson, Your Honor. That's
17 Defense Exhibit A.

18 Defense Exhibit B is an additional trial
19 transcript. It's the opening statements from that
20 trial.

21 And Exhibit C is the trial transcript of
22 the closing statements from that trial.

23 And Exhibit D would be the civil suit that
24 was filed on December 18, 2001. And that is
25 01-CV1411, assigned to WD -- that's Judge Deaton --

1 and DJS. So, Your Honor, if I may approach.

2 THE COURT: All right. Any objections to
3 Defendant Baca's Exhibits A, B, C, and D, Mr.
4 Castellano?

5 MR. CASTELLANO: No objection, Your Honor.

6 THE COURT: Any objection from any of the
7 other defendants?

8 All right. They'll be admitted.

9 And that has about everything that you
10 would be able to give me as well, right, Mr.
11 Castellano, you don't have any additional exhibits?

12 MR. CASTELLANO: That's correct, Your
13 Honor.

14 THE COURT: All right. Anything else, Mr.
15 Lowry?

16 MR. LOWRY: If I may approach?

17 THE COURT: You may.

18 MR. LOWRY: Your Honor, if I may, Ms.
19 Duncan would like to be heard on a few of the matters
20 involved in this. And if I could relinquish the
21 podium to her, so she could speak on this matter,
22 Your Honor, I'd greatly appreciate it.

23 THE COURT: All right. Thank you, Mr.
24 Lowry.

25 Ms. Duncan.

1 MS. DUNCAN: Your Honor, I'll be brief. I
2 won't repeat anything that Mr. Lowry has already
3 pointed out.

4 I just -- I wanted to tell the Court that I
5 have independently investigated this issue on behalf
6 of Mr. Baca. I agree with Mr. Lowry's analysis that
7 there is no conflict. I've read through these
8 transcripts. There is nothing in the civil lawsuit
9 that Eric Duran filed against Wackenhut that would
10 bear on this case.

11 As Mr. Lowry mentioned, the Government
12 filed a motion in limine in the criminal case, which,
13 essentially, was exactly the same allegations, which
14 is why those transcripts are relevant. And moved in
15 limine to exclude any evidence of gang activity by
16 Mr. Duran. The defense agreed that it wasn't
17 relevant, that the incident was not at all
18 gang-related.

19 But one point I wanted to make to the Court
20 is, according to discovery and available public
21 information, Mr. Duran wasn't even a member or
22 affiliated or suspected of being a member of the SNM
23 in 2001, when this lawsuit was pending. If you look
24 at the Government discovery, the gang that he was
25 allegedly affiliated was the Eastside Locos. And the

1 first place I can see him being allegedly involved,
2 or any kind of allegation that he was involved with
3 the SNM was in 2005, so long after the civil lawsuit.

4 The other issue that I wanted to raise with
5 the Court is in its motion, the Government alleges
6 that, perhaps, Mr. Duran spoke with Mr. Donatelli
7 about his drug dealing. So, number one, if there was
8 drug dealing, it certainly wasn't on behalf of the
9 SNM, because he had no affiliation with them at that
10 point.

11 But number two is, during the criminal
12 case, there was another motion in limine about
13 Mr. Duran's use of drugs, and whether the defense
14 intended to introduce that evidence at trial. And
15 the court excluded the evidence because the defense
16 didn't -- that wasn't their argument -- their
17 argument wasn't Mr. Duran was on drugs, and
18 therefore, they had to take him down. The only
19 argument they intended to make was some general
20 argument about drugs in prison, and prisons are
21 dangerous. So that wasn't an issue. There is
22 nothing on the objective record that would indicate
23 it would have been an issue that Mr. Duran would have
24 discussed with counsel.

25 So, you know -- and I am -- in a sense, we

1 discovered the civil lawsuit last year. As Mr. Lowry
2 said, I've been prepared to cross-examine Eric Duran.
3 I've taken the lead on the investigation, and putting
4 together that cross-examination. So, you know, there
5 is no conflict. But out of an abundance of caution,
6 we have taken protective measures. And those
7 protective measures are more than adequate under the
8 circumstances.

9 THE COURT: Have you talked to Mr.
10 Donatelli?

11 MS. DUNCAN: I spoke to him briefly in
12 March of -- March of last year, I did. When we
13 first -- when I first discovered that Mr. Donatelli
14 had represented Eric Duran, I called him and spoke to
15 him, with Mr. Lowry, about it. And Mr. Donatelli
16 expressed to me that he did not see it as a conflict,
17 because of the limited nature of the litigation.

18 THE COURT: I'm just thinking a little bit
19 out loud: I wonder if it might make some sense if
20 you sit down, with some of the things that Mr. Lowry
21 was suggesting that I do ex parte, maybe you do, and
22 then do some affidavit or letter or report to the
23 Court about what he would say about those topics that
24 Mr. Castellano has raised.

25 MS. DUNCAN: I'm happy to do that, Your

1 Honor. I could have a conference call with Mr.
2 Donatelli and report back to the Court.

3 THE COURT: Why don't you get a
4 transcript -- I know y'all are getting transcripts of
5 this -- and go through carefully what Mr. Castellano
6 is talking about as far as confidential information.

7 Because it seems to me that I'm having a
8 harder time saying this is a related case, or the
9 same case. But it does seem to me there is at least
10 the potential for some confidential information of
11 the nature that Mr. Castellano is raising. And it
12 seems to me I don't have something that forecloses
13 that.

14 So maybe your report, your affidavit, your
15 investigation, might go a long way. Because Mr.
16 Castellano is not going to be able to get that. And
17 without me sitting and talking to Mr. Donatelli, and
18 then, perhaps, finding out information I really
19 probably don't need to know, I'm not sure there is a
20 way of putting -- closing the gap.

21 MS. DUNCAN: I'm happy to do that, Your
22 Honor. I'll get a transcript as soon as I can and
23 share that with Mr. Donatelli, and report back to the
24 Court.

25 But I am -- just based on my own

1 investigation and my responsibilities to Mr. Baca, I
2 am convinced that there is no conflict.

3 And, like I said, I am able and willing to
4 handle the Duran matter.

5 THE COURT: I know that Mr. Davis kept
6 bringing that up -- Ms. Bhalla as well -- but I
7 didn't see a lot in my work on -- with the Davis
8 memo -- that told me that handing it to co-counsel
9 solved any problems.

10 So if you, in y'all's work, Mr. Lowry said
11 he wanted to file something over the weekend -- you
12 might look at that a little bit, because I didn't see
13 a lot that gave me much encouragement that that
14 was -- helped any on the conflict issues.

15 MS. DUNCAN: I think there are some cases
16 on point on that, Your Honor. And we definitely will
17 brief it and have it filed by Monday.

18 THE COURT: All right.

19 MS. DUNCAN: Thank you.

20 THE COURT: Thank you, Ms. Duncan.

21 Mr. Castellano, before I give you the last
22 word, Mr. Lowry, did you have anything else you
23 wanted to say?

24 MR. LOWRY: Your Honor, just -- I think the
25 best case, with the issues you just raised -- pardon

1 me, Jennifer -- the best case I can recall, Your
2 Honor, would be a district court out of West
3 Virginia -- or pardon me, out of the Western District
4 of Virginia, Durham v. Blankenship. That's at 461
5 F.Supp., 492. And in that case, like this one, the
6 defendant had two attorneys, and the court -- as this
7 Court was -- was concerned about the zealous and
8 impartial defense of the present client. And I'll
9 quote from the opinion at page 499. "The court notes
10 that two attorneys, Simpson and Singer, represented
11 petitioner at his 1972 trial. While petitioner
12 alleges that Simpson was limited by divided loyalty,
13 petitioner made no such allegation against Tisinger,
14 nor has he alleged that Simpson influenced Tisinger.

15 "Furthermore, the Court finds no evidence
16 whatsoever in the record to indicate that there was a
17 conflict of interest of any nature that would taint
18 the assistance that Tisinger would afford the
19 petitioner."

20 Now, albeit, this is one of those cases
21 that's looking in the rearview mirror at a
22 conviction, but I think the analysis here is sound;
23 that, if there is nothing that can be -- whatever
24 could be said about the Rules of Professional
25 Conduct, imputing knowledge to me, Your Honor,

1 wouldn't bear on Ms. Duncan's ability to represent
2 Mr. Baca.

3 And, Your Honor, I don't want to belabor
4 the point. But I would point out, as you pointed out
5 in your opinion, that the Rules of Professional
6 Conduct don't necessarily govern or completely
7 control the constitutional analysis with regard to
8 Mr. Baca's right to the attorney of his choice. And
9 the reason I say that -- and I'm not diminishing the
10 role or, you know, sliding the Rules of Professional
11 Conduct in this matter -- but, as this Court knows as
12 well, you know, there is certain rules that the Court
13 has declined out of the Rules of Professional Conduct
14 to apply to federal practitioners.

15 Interestingly enough, the one rule applies
16 to the United States Attorney's Office, and those
17 attorneys' right not to interfere with
18 attorney-client relations by subpoenaing defense
19 attorneys to federal grand juries.

20 So, you know, the Court has the authority,
21 as you pointed out, to rule that, in a specific case,
22 the Rules of Professional Conduct don't necessarily
23 apply. And I'm not suggesting that the Court should
24 take the rules lightly. But I think, given the
25 nature that -- the way we handle this, the degree we

1 took to make sure that no confidential information
2 was ever shared with Mr. Baca's defense team, and
3 even within the defense team to make sure that Ms.
4 Duncan handled this particular witness -- more than
5 ensured that whatever could be said about the
6 confidences that Mr. Duran may have shared with Mr.
7 Donatelli, that those were maintained, and they
8 weren't either used or revealed in the sense that
9 Rule 16-109 contemplates.

10 Thank you, Your Honor.

11 THE COURT: And I assume that, if I decide
12 this can be waived, or if there is a conflict and it
13 can be waived, Mr. Baca will waive?

14 MR. LOWRY: That's my understanding, Your
15 Honor. Ms. Duncan and I went and spent an hour with
16 Mr. Baca last night, and told him that this was going
17 to be teed up first thing this morning. And he's
18 prepared to discuss that with Your Honor, if you'd
19 like. Ms. Duncan led that conversation, for the
20 obvious reasons. But I wanted to be there, just in
21 case Mr. Baca had any questions of me about the role
22 I had in this case and my participation.

23 But I would assure the Court that, when
24 this whole thing arose back last spring that we
25 brought it to Mr. Baca's attention at that time. And

1 it just never -- you know, it hasn't cropped up in
2 the context of our conversations.

3 But if the Court wanted to speak with him,
4 I'm sure he's willing to speak with you.

5 THE COURT: Well, I won't do a colloquy
6 today. But I'm understanding that he's prepared and
7 willing to waive any conflict, if I decide that's a
8 necessary step.

9 MR. LOWRY: Yes, Your Honor, that's my
10 understanding.

11 THE COURT: All right. Thank you, Mr.
12 Lowry.

13 Mr. Castellano, I'll give you the last word
14 on this issue.

15 MR. CASTELLANO: Your Honor, I really don't
16 have any argument.

17 What I want to ask the Court is: In Ms.
18 Duncan's discussions with Mr. Donatelli, if there is
19 anything the Court wants to know about the
20 representation of the class? That's another topic
21 particular that she can discuss with him.

22 I don't know what he discusses with inmates
23 when he goes out to oversee the consent decree or
24 what's left of it. So that would be another issue to
25 explore, would be whether or not they talk about gang

1 membership; why they're classified at a certain
2 level, things of that nature; and whether they can
3 search their files to see if they've represented
4 anyone in this case.

5 So I just put that out there as a
6 suggestion, other answers that we can get now.

7 THE COURT: I appreciate it. And if you
8 think of anything else, pass those on to Ms. Duncan,
9 because I think it would be a good idea to be as
10 comprehensive at this fact-gathering stage as we can.

11 MR. CASTELLANO: I will, Your Honor.

12 THE COURT: All right. Anything else, Mr.
13 Castellano?

14 MR. CASTELLANO: No, sir. Thank you.

15 THE COURT: Thank you, Mr. Castellano.

16 Well, as I've indicated, I'm not convinced
17 that this is the same or related case. It seems to
18 me that it's different. So it seems to me that, to
19 establish that they're the same case, related case,
20 we're going to have to look at this confidential
21 information. It seems to me it's more in the nature
22 of a potential conflict. And it seems to me that it
23 is in the nature of a conflict that can be waived.

24 So we've got a lot of more information that
25 we need to get. And we also need to probably find

1 out where Mr. Duran is on this issue.

2 The consent decree case, I guess the case
3 was reopened. It is before Judge Gonzales. So it's
4 not really a successive representation case. It may
5 be a concurrent representation case. I'm afraid I'd
6 just be thinking out loud, but it would seem to me
7 that some of the same rules of waiver and substantial
8 case or related case would still apply, so we may be
9 able to do that analysis together.

10 And then, with the additional information
11 we may get from talking to Mr. Donatelli about how he
12 interviews and what he does in that case, it may be
13 that that is a waivable situation as well.

14 So I'm not inclined to disqualify anybody
15 today. I think we've got some more work to deal
16 with. So we're a little bit down the road before
17 we're going to be able to make an informed decision
18 on that.

19 All right. Let's, then, take up -- I guess
20 the next motion is, Ms. Bhalla, your motion to --
21 your portion of the motion to continue the January 29
22 trial as to Mr. Herrera. Let me give you what my
23 thoughts are. I guess I'm inclined to deny the
24 motion without prejudice to you renewing it down the
25 road. It seems that Mr. Maynard -- I would assume,

1 you know, that your case is in good shape in the
2 sense that despite there being a lot of material
3 here, you can probably sort it out and figure out
4 what's relevant to Mr. Herrera and what's not. In
5 some ways, the case has some complexities, but on the
6 other hand, in some ways, once you get through it and
7 figure out the evidence, it's a rather
8 straightforward murder case, and with, in fact,
9 fairly limited information. We're still about 60
10 days out, a little bit less. I guess I wouldn't be
11 inclined to grant the motion, and wouldn't be
12 inclined to grant it, certainly, at this time. It
13 seems to me you're probably in pretty good shape to
14 try the case with Mr. Maynard. But those are my
15 thoughts after reviewing your motion.

16 Ms. Bhalla.

17 MS. BHALLA: Well, first off, Your Honor, I
18 appreciate the vote of confidence on that, in that
19 regard. But, Your Honor, I think that one of the
20 reasons most of these gentlemen have two lawyers is
21 to deal with exactly what you said: The amount of
22 discovery. In my motion, I stated to the Court that
23 there were over approximately, you know, 10,000
24 anticipated documents in the beginning of the case.
25 And I was filing that in a little bit of a hurry,

1 because I knew about the Court's position on the
2 conflict, and I was trying to move things along as
3 quickly as I could, in terms of getting counsel
4 appointed and figuring out where we were. But I've
5 relooked at those numbers. And just for the 4268
6 case -- this isn't including 1613 and the other
7 matter -- there are 38,963 JPG files. There are
8 2,824 PDF files. And there are 4,939 audio files.
9 And the Court is correct, it is a lot of discovery,
10 but, you know, at the end of the day, you know what
11 you have on your client, and you prepare with that,
12 and you proceed. And I think that I would be more
13 game if I felt that that were the picture in this
14 case.

15 But we really have had a hard time getting
16 some of the discovery sorted out. There is so much
17 of it, but it's also been a little bit difficult to
18 get sort of a straight answer about what evidence the
19 Government intends on using. And that sort of segues
20 in a little bit to our suppression motion, although I
21 don't anticipate us getting into that this
22 afternoon -- maybe this afternoon.

23 But one of the things that the Government
24 alleged a year ago, in November, which was pretty
25 recently after I'd been assigned to the case -- and

1 that's another little aside, Your Honor. Most of the
2 lawyers in this courtroom -- of course that doesn't
3 apply to Ms. Torracco being here today as well -- but
4 most of the lawyers have been here for a couple of
5 years. I came in a year later. And, you know,
6 Mr. Davis and I had divided things up, and analyzing
7 all of the discovery wasn't in my division of labor
8 task. That being said, I'm going to do the best I
9 can to catch up. But one of the issues, as I was
10 beginning to articulate, is that after that hearing
11 in November, the Government alleged that Carlos
12 Herrera had made some statements, and, basically,
13 that amounted to admissions. And we asked for those
14 statements back in November. And we've been asking
15 for those statements repeatedly over the course of
16 the last year.

17 And in November -- at the November we
18 had -- at one of the early November hearings, we had
19 a motion to compel. And the Government indicated
20 that they would provide that, pinpointed transcripts.
21 Well, I still don't have the pinpointed transcripts.
22 And I communicated with Ms. Armijo via email last
23 week, and I said, You know, it seems to me like, if
24 there is an admission, it would be nice for us to
25 know before we litigate a suppression motion. And I

1 still haven't received that.

2 Now, I've narrowed down which transcript I
3 think the Government is referring to, and I've
4 reviewed it, and I still don't necessarily see an
5 admission. And that's something that we'll get into
6 later. But I think what it shows to the Court is
7 that this isn't easy to determine what evidence the
8 Government plans on introducing against our clients,
9 and that's part of the problem when the discovery is
10 this massive. It's finding what is applicable to our
11 client, and having the time necessary to review that
12 evidence.

13 The other issue, Your Honor, is experience.
14 And I am going to put out there that I'm going to do
15 my best to catch up. I've sort of laid out my
16 experience for the Court. I'm not shy about the fact
17 that I don't have a lot of federal criminal
18 experience. And I think why that is relevant is,
19 when I called Mr. Maynard to help me with this case,
20 I said, you know, it's complex, and there is not a
21 lot of lawyers left on the complex panel, and I
22 really need somebody to help. And he looked at me
23 and said, okay. And we talked about it. Well, once
24 he got in, after he'd been appointed and started
25 looking at the evidence, he said, "Well, you know,

1 Ms. Bhalla, there are complex cases, and then there
2 are complex cases." And I don't think that I had
3 done a very good job of alerting him to the fact that
4 this was of the more severe complex category. And
5 that goes to my experience, Your Honor, because I
6 haven't had a lot of complex federal criminal cases.
7 And to me, I guess I just assumed they were all like
8 this, which I'm glad to say is not the case.

9 But I think that when you're looking at
10 sifting through that much discovery, and trying to
11 figure out what is applicable to your client, then it
12 does become relevant. This hasn't been a very
13 straightforward process for us.

14 And with that being said, Your Honor, I
15 think I might let Mr. Maynard address some of the
16 issues that he feels arise from coming in so late in
17 the game, Your Honor.

18 THE COURT: Well, a couple of -- some of
19 the things you raise, I think, are just issues that
20 all the defendants are having, and -- or at least
21 complaining about, as far as discovery and those
22 things. Those don't seem to me to rise to a level of
23 a motion to continue right now, because nobody else
24 seems to be thinking that that is -- you know, that
25 discovery is at a point where they need to move

1 because of lack of discovery. So it seems to me
2 you're not unique in that complaint about needing
3 something here or something there to get the case
4 ready to try. Your thoughts on that?

5 MS. BHALLA: Well, I would just say that I
6 agree that that's true, that I think that is a common
7 theme among all the parties. But the difference is
8 the other parties have been here for two years and
9 have been able to review a lot more of the discovery
10 than I have been able to review. And I don't know if
11 the Court -- you know, one of the -- a huge issue we
12 had when I first came into the case was that our
13 investigator, Daniel Berge, got a job at the Federal
14 PDs, and is no longer on this case, and we had to
15 bring in a new investigator. So Michael Davis came
16 in, I believe, six months later than all the other
17 attorneys. I came in a year after all the other
18 attorneys. And I don't know how long our
19 investigator has been on the case, but not as long --
20 you know, for a shorter amount of time than I've been
21 on the case.

22 And so, yes, that problem is not unique to
23 us. But we've had less time to try to go through
24 this discovery and find on our own initiative and
25 through our own investigation, which discovery is

1 relevant.

2 Just yesterday, I found some discovery that
3 may be pretty exculpatory, that we hadn't seen
4 before, and that's because we're playing catch-up
5 here. And I've lost the person who was trying to
6 really understand the discovery. It's one thing to
7 read it and relay what you've read. It's another to
8 really sift through it and see what's relevant and
9 what's not. And we haven't had the same amount of
10 time to prepare on this issue as others.

11 THE COURT: All right. Thank you, Ms.
12 Bhalla.

13 Mr. Maynard.

14 MR. MAYNARD: Your Honor, I have five days
15 in this case. It is true that when I spoke to Ms.
16 Bhalla at first I was very hesitant to get into the
17 case and then I said, Okay, well, let's give it a
18 try. I knew nothing about this case except that it
19 existed and that it was a complex case. I've really
20 known nothing about the SNM Gang in any detail
21 whatsoever. I haven't been following it in the
22 press. And I'm still trying to get oriented, with my
23 head spinning, about the cast of characters, the
24 names and the relationships, who is going to trial in
25 January, and who is going to trial in April. I can

1 tell the Court I will do my best, if a continuance is
2 denied, to be ready. I can't guarantee in any way I
3 will be ready. I'm not in a position to know if my
4 colleague is prepared, because I don't know enough
5 about her preparation. And, of course, since Friday
6 afternoon, when I learned I was going to be on the
7 case, when I was appointed, I've also had to spend
8 much of my time trying to ethically shed my
9 responsibilities to my existing clients. I've taken
10 my name off the criminal appointment panels in state
11 court and federal court. But I can't just instantly
12 dump some of these cases. I have continuing
13 obligations to them.

14 So, with the quantity of evidence I'm,
15 frankly, very concerned that there are some critical
16 pieces of evidence that because of the lack of time I
17 won't be able to appreciate and perceive. And this
18 is the risk.

19 THE COURT: All right. Thank you, Mr.
20 Maynard. There used to be a -- Joe Namath used to
21 throw to an El Paso wide receiver named Maynard. Is
22 that any relation to you?

23 MR. MAYNARD: I don't think so, Your Honor.

24 THE COURT: All right. He was a pretty
25 good UTEP ballplayer.

1 MR. MAYNARD: Right.

2 THE COURT: Caught a lot of Joe Namath's
3 passes. I just wondered. He used to come over to
4 Hobbs, too -- shows you where the NFL is today -- in
5 the off season he'd tell ties. He'd hang the ties in
6 the laundry shops in Hobbs. I'd get his autograph.
7 That's what he'd do in the off season.

8 All right. Good to have you in the case,
9 Mr. Maynard.

10 MR. MAYNARD: Thank you, Your Honor.

11 THE COURT: All right. Any other
12 defendants want to speak on this motion to continue?

13 All right. From the Government's
14 standpoint, Mr. Castellano, are you going to handle
15 it?

16 MR. CASTELLANO: Yes, Your Honor.

17 THE COURT: All right. Mr. Castellano.

18 MR. CASTELLANO: At this point, I'd say I
19 agree with the Court's approach. I understand the
20 position that Mr. Herrera's attorneys are in. I
21 think that, in addition to the position they're in,
22 though, there is a joint defense agreement. And so,
23 obviously, the teams are working together in
24 preparation for this case. So if the Court needs
25 to -- I don't have any objection to the Court hearing

1 ex parte what they have and haven't done, or how far
2 they are in their preparation, just so we can make a
3 record here.

4 But what I would ask is that the Court deny
5 the continuance for now. Move us closer to trial, to
6 see where they are. And if they truly are not ready
7 to continue to trial, then I think we make our record
8 at that point. And the question then becomes whether
9 or not it's a continuance of all the defendants in
10 the Molina case, or whether or not it results in a
11 severance. But I just don't think we're there yet.

12 THE COURT: All right. Thank you, Mr.
13 Castellano.

14 Does anybody have any objection if Ms.
15 Bhalla and Mr. Maynard want to submit additional
16 material to me ex parte so that I can see any
17 problems that they have in making this determination?

18 Not hearing any, I'll give you that
19 additional opportunity, if you want to send anything
20 ex parte so I can see it, and you can make your
21 record as well. And I'll also give you the last word
22 on your motion, Mr. Maynard, Ms. Bhalla.

23 MS. BHALLA: Just briefly, Your Honor, you
24 know, one of the things that I failed to mention to
25 the Court is, at this time, there are 290 something,

1 I think, witnesses disclosed on the Government's
2 witness list. And so, you know, trying to get Mr.
3 Maynard up to speed on who the actual players are in
4 this case is a challenge. But I think that we can
5 submit that in part of the ex parte comments, and so
6 I won't go into that too much here, Your Honor.

7 THE COURT: Okay. Do you have anything
8 else you want to say, Mr. Maynard?

9 MR. MAYNARD: No, Your Honor.

10 THE COURT: All right. So I'm going to
11 deny the motion without prejudice to renew. I do
12 think we're still far enough out from the case that I
13 think that the defendant can be prepared. I reviewed
14 Mr. Maynard's impressive resume. And also I have
15 every confidence, given my work with Mr. Davis, that
16 he's handing off the case in very good shape, and
17 that the documents that have been in discovery that's
18 been produced, it's been searched very well for the
19 materials that Mr. Herrera -- that is pertinent to
20 Mr. Herrera and important to his defense. So I think
21 the case is being handed off. We'll take a look at
22 it. We'll continue to monitor it. I certainly want
23 Mr. Herrera and all the defendants to get a fair
24 trial. But at the moment, I feel like he's going to
25 get a fair trial, and he's going to get it starting

1 January 29, because I think that the hand-off has
2 been relatively smooth, and the amount of documents
3 and the discovery that's really pertinent to Mr.
4 Herrera is fairly contained. But we'll continue to
5 monitor the situation.

6 All right. Are we now ready to go to the
7 motions to suppress? Ms. Bhalla, do you know what
8 the order is? What's next?

9 MS. BHALLA: My understanding, Your Honor,
10 was that Mr. Villa's intention was to start with the
11 motion to suppress lost evidence. I will ask him if
12 that's going to be different or the same today.

13 THE COURT: And when we talk about the
14 motion to suppress, are we talking about your motion
15 1294 to suppress the statements that Mr. Herrera made
16 to Billy Cordova, or are we talking about one of the
17 other motions to suppress? Is that the one?

18 MS. BHALLA: I was just here first, Ryan.
19 There were two motions to suppress, Your Honor. Mr.
20 Villa and I both filed motions to suppress statements
21 to Billy Cordova that are similar. And that's why we
22 joined those motions.

23 Mr. Villa also has a second -- I don't know
24 which, if it was first or second -- but a separate
25 suppression motion for lost or destroyed evidence.

1 Our conversations about the schedule included that
2 the lost or destroyed evidence motion would go first.
3 And then we would try to begin the suppression
4 motion, if there was enough time. And we may have to
5 do the suppression motion a little bit in
6 installments, because our expert isn't here until
7 next week. And so there was going to be a little bit
8 of shuffling around on that issue. But that the
9 motion to suppress lost or destroyed evidence would
10 go first.

11 THE COURT: All right. Is that your
12 understanding, Mr. Villa?

13 MR. VILLA: It is, Your Honor. I think
14 that Ms. Wild indicated to me -- to the group -- a
15 little while ago that I think there is a different
16 set of notes that perhaps the Court needs to look at.
17 But we're going to proceed with the number 1300, Mr.
18 Perez' motion for lost or destroyed evidence.

19 We asked to move up 1294 and 1295, the
20 suppression motions regarding Billy Cordova's
21 statements to at least start them this week, because
22 of, my understanding, the absence of Eric Duran made
23 it so we couldn't do those motions for Mr. Baca, so
24 we're trying to fill, essentially, tomorrow with
25 those other suppression motions. So we're going to

1 start 1300 this morning. And I believe that's the
2 Government's understanding as well.

3 THE COURT: Is that correct, Mr.
4 Castellano? Ms. Armijo?

5 MS. ARMIJO: Yes, Your Honor.

6 THE COURT: Well, I reviewed the material
7 on this lost or destroyed evidence. We've had some
8 discussion about this walker. Certainly, we'll hear
9 anything anybody wants to say, but it seems to me
10 that what you're doing, and unless I'm wrong and
11 don't understand how this area of law works, is that
12 I thought the Tenth Circuit had made it somewhat
13 clear that before you begin to get remedies for lost,
14 destroyed information, you were going to have to
15 establish a very heightened standard on the
16 defendant's part -- on the Government's part -- that
17 there was intentionality, bad faith, those sort of
18 things.

19 And here, it seems to me -- and again,
20 maybe I don't understand all the facts, but if there
21 was any sort of problem with the way the evidence was
22 handled, it was by the New Mexico State Police, and
23 not by the United States Attorney's Office. And so
24 it's difficult to, A, impute any bad faith or the
25 heightened standards that are required to receive

1 relief to the Department of Justice, when those were
2 the actors. And secondly, it didn't seem to me that
3 there was any bad faith, or -- here, it was more just
4 a very negligent way of, perhaps, handling
5 information that may not have been perceived as very
6 important then, but now, as we get ready for trial
7 against Mr. Perez, it looks a whole lot more
8 important.

9 So it seemed to me it was going to be
10 difficult for you to get to those high standards that
11 were necessary to get any sort of relief. It seemed
12 to me that you may have a lot of impeachment
13 information here; you may be able to really nick the
14 Government around for some of the things they've
15 said, and representations they've made, and the
16 importance of the shank. But it fell into the
17 cross-examination category rather than something the
18 Court should either instruct the jury, suppress
19 evidence, or those sort of things.

20 So those are my thoughts coming in, after
21 reading everything.

22 MR. VILLA: And, Your Honor, I think that
23 there is a heightened standard, essentially bad
24 faith, with respect to Youngblood. And Youngblood
25 says: If there is potentially exculpatory evidence,

1 in order to get some kind of relief, I think that the
2 Court has to find that the Government acted in bad
3 faith. And I think it's interesting to note, you
4 know, in Youngblood, a jury instruction was given.
5 So --

6 THE COURT: Let's do this: I've kind of
7 lost track on time --

8 MR. VILLA: Oh, sure.

9 THE COURT: Why don't we take our morning
10 break, and I'll come back in. Because I need to have
11 you talk to me fully, without being rushed, about
12 Youngblood. So we'll be in recess for about 15
13 minutes.

14 MR. VILLA: Yes, Your Honor.

15 (The Court stood in recess.)

16 THE COURT: Everyone got an attorney? Look
17 around, help your buddies out, so we can make sure
18 everybody has got an attorney.

19 All right. While we're shifting Mr. Perez
20 around in his table, let me ask, Mr. Castellano --
21 everybody kind of be quiet.

22 Mr. Castellano, on the conflict motion, I
23 think I asked the same question I did of you on the
24 Davis motion; I'll ask it here: There, you felt like
25 the ethics compelled Mr. Davis to be disqualified.

1 Are you at that position where you think that Mr.
2 Lowry and his firm have to be disqualified, or are
3 you at a different position on this motion?

4 MR. CASTELLANO: At this point, I think we
5 are at a slightly different position, just because
6 there is information that we don't know. And we
7 don't know what we don't know at this point. But on
8 its face, where we are now, it seems to be a lesser
9 of a problem than it was with Mr. Davis. That's what
10 I can say based on what we have now.

11 THE COURT: Okay. All right.

12 MR. CASTELLANO: I think the issue is still
13 looming, but it doesn't seem as strong as it did with
14 Mr. Davis.

15 THE COURT: It looks to me like the Duran
16 Consent Decree, that the notes take care of
17 themselves. I don't think they treat the class
18 members as clients of the firm. So I'll explore that
19 a little more, but a quick look at that doesn't
20 indicate that they're treated as class members. I'll
21 have to look at that, because I do think, in certain
22 situations, it sure looks to me like there is a close
23 similarity. But there is something in the notes. So
24 I think it's probably going to be a confidential
25 information problem. And it looks like to me like,

1 if it's contained -- in other words, Mr. Lowry
2 doesn't have any confidential information, and he's
3 walled off, I'm not sure then I can then find that
4 it's the same or a related case with the information.
5 Even if there is some information there that might
6 concern me. So I'm at least moving or thinking in
7 the direction of not granting that motion. So that's
8 kind of where I am.

9 MR. CASTELLANO: I agree. I think the Eric
10 Duran issue seems like a lesser problem. I guess one
11 thing we'll have to figure out with the class -- I
12 don't look at class actions often at all -- but I
13 assume in any class there could be conflicts within a
14 class. And the attorneys representing them would
15 have to sort through any conflicts that are with the
16 class. They still cannot represent people who are
17 completely within the class. And I think that's what
18 we have to get to the heart of.

19 THE COURT: Yeah, and that class was
20 certified so long ago, that class certification
21 decision was made so long ago that, you know,
22 conflicts that may exist now probably weren't
23 something that Judge Burciaga was thinking about, or
24 could have had knowledge about. So it's probably a
25 different world now.

1 MR. CASTELLANO: It may be, Your Honor.
2 And my understanding, which is very limited, from
3 what Mr. Brewster told me, I think that all
4 defendants who, I believe are Level 3 or higher may
5 be members of the class. So they have the different
6 classifications levels, so that would, I believe,
7 include probably everyone in this case who has been
8 in the prison system at some point.

9 THE COURT: All right. Thank you, Mr.
10 Castellano.

11 Did you want to say something on that, Mr.
12 Lowry?

13 MR. LOWRY: Your Honor, not particularly on
14 that.

15 I just have one housekeeping matter that I
16 raised during the argument. And I'd asked to get
17 the, what I call the confidential informant contracts
18 disclosed from the United States. I mean, we're
19 still, you know, struggling to get that material. I
20 think it's Brady and Giglio that should already have
21 been released. But I think it helps us. And the
22 reason I put on the Michael Flynn cooperation
23 agreement, so we could just understand the type of
24 language that's often used in those. And I think it
25 would be helpful to pin down the Court's concerns

1 about the confidential information, to have that, so
2 we could talk more intelligently about waivers and
3 the scope of, quote, "confidential information, "and
4 how it was used.

5 THE COURT: Where are we on the production
6 of those, Ms. Armijo?

7 MS. ARMIJO: Your Honor, I believe it was
8 requested specifically towards the end of last week,
9 or maybe even this weekend. I think, when we spoke
10 on Saturday, actually. And so Special Agent Acee
11 brought down documents with him this morning. And I
12 have not had an opportunity to review them, but I
13 believe we are inclined to disclose all of that
14 information, as far as any paperwork. And I say
15 "paperwork," because I don't believe we had an
16 official contract. The FBI had a contract. So there
17 is paperwork, but we will go ahead and disclose that,
18 that he had with Special Agent Acee.

19 THE COURT: All right. Why don't you take
20 a look at what they give you, Mr. Lowry. If it's
21 different from what you're needing, then you can
22 reraise that issue. But let's hold it off until you
23 get the documents, which look like you're going to
24 get today. Is that acceptable?

25 MR. LOWRY: Yes, it is, Your Honor.

1 THE COURT: All right. Mr. Villa.

2 Now, let me just ask, because I may be
3 ignorant on this issue: Is this Youngblood test the
4 same one that I use over in the civil context for
5 deciding whether I should give an adverse inference
6 instruction to a jury when there has been a
7 spoliation of evidence? Is it the same analysis in
8 the civil area and the criminal area? Because I'm
9 very familiar with the civil area; less so in the
10 criminal later.

11 MR. VILLA: I don't think it is, Your
12 Honor. But I also don't think Youngblood dictates
13 whether you give a jury instruction or not. The
14 reason is, what I was getting to before I stepped
15 away, was they gave a jury instruction in Youngblood.
16 It was a dismissal at a higher sanction, when
17 evidence is destroyed. And the Court came down and
18 said exactly as you said, Your Honor: There has to
19 be bad faith on the part of Government in order to
20 get to a dismissal-type remedy under the due process
21 test. The Youngblood court didn't say You can't give
22 a jury instruction, or some other remedy. And I
23 think it's important to note that one of the reasons,
24 in Youngblood, for the holding they reached is there
25 was a jury instruction given. I think the Court can

1 look at some other things.

2 And Youngblood also is a different test
3 than California versus Trombetta. That's 1984.
4 Youngblood did not overrule Trombetta. And Trombetta
5 deals -- and the distinction is, evidence that is
6 apparently exculpatory before it's destroyed, right?
7 Youngblood says it is exculpatory. It's exculpatory,
8 and the Government destroys it, and they do it in bad
9 faith, the court can dismiss. We haven't even asked
10 the Court for dismiss as a remedy. We're asking for
11 suppression. And I think the Court has the authority
12 to do that, if it found bad faith, and if the
13 evidence was exculpatory under Youngblood.

14 THE COURT: What exactly are you
15 suppressing here? I mean, if it's lost, what are we
16 suppressing?

17 MR. VILLA: So what we would ask the Court
18 for the remedy to be is to suppress all the evidence
19 in connection with the walker. So the photos that
20 the Government purports to say is Mr. Perez' walker,
21 the shanks that the Government purports to say came
22 from Mr. Perez' walker, the testimony from
23 cooperating witnesses, who by the way, never
24 mentioned Mr. Perez' walker until they cooperated in
25 this case; that the shanks came from Mr. Perez'

1 walker, the Court heard some of that testimony last
2 week. We've listed a number of those things, both
3 our motion and our reply, the evidence that we've
4 identified that the Court ought to suppress, if it
5 finds either a Youngblood or a Trombetta violation.
6 And I think that's the appropriate remedy.

7 The alternative request we have of the
8 Court would be a jury instruction. I think the Court
9 could probably give the jury instruction regardless
10 under the ideas of Youngblood and Trombetta. But to
11 get to suppression, I think we need to establish a
12 Youngblood or a Trombetta violation. But we haven't
13 asked, under the specific circumstances of this case,
14 for a dismissal.

15 And I think, to respond to the Court's
16 comment about, Well, the Department of Justice didn't
17 do it, or these prosecutors didn't do it: I don't
18 think that's the standard. I think that, clearly if
19 state actors were on the investigation team, and they
20 said: This evidence is exculpatory to Mr. Perez, we
21 better throw it in the fireplace so he doesn't win
22 his case because we really want to get him, and the
23 United States Government decided they wanted to
24 prosecute the case because they have jurisdiction, I
25 don't think they're off the hook. There is still a

1 due process violation for which a remedy is due. And
2 I think the same thing under Trombetta. If the
3 agents are state actors, and they determine that --
4 there is an objective standard under Trombetta that
5 the evidence was apparently exculpatory, and then
6 they don't preserve it, it doesn't matter that
7 they're state actors and it's a federal prosecution.

8 And, Your Honor, I think that we believe
9 that we can establish, with the witnesses that we
10 have prepared to put on today and the evidence that
11 we submit, that there was both a Trombetta violation
12 and a Youngblood violation. I mean, the Court will
13 have to make some, perhaps, credibility
14 determinations, when it comes to Youngblood and bad
15 faith. But Trombetta is objective. Did these
16 individuals know -- and you're going to -- some of
17 the evidence you're going to see today that is three
18 days after this alleged homicide, Mr. Perez was
19 interviewed, and he told Agent Palomares that STIU
20 had taken his walker that morning, or perhaps it was
21 the day before, and they had said there was a piece
22 missing from the walker. And Mr. Perez said, "I
23 didn't do anything. I don't know anything, it was
24 missing when I" --

25 THE COURT: I thought I also read -- and

1 correct me if I'm wrong -- that Mr. Perez said that
2 there was piece missing. Did he also confirm that
3 there was piece missing?

4 MR. VILLA: He didn't. He says in the
5 statement --

6 THE COURT: Did or did not?

7 MR. VILLA: He did not. He says in the
8 statement that STIU told him there was a piece
9 missing, and then Mr. Perez says, "I'm not involved
10 in this. And I don't know who is involved. And I
11 was in the shower." So three days after the
12 homicide, it's apparent that the walker is
13 exculpatory, because Mr. Perez is denying any
14 involvement, and he's denying that he has any
15 knowledge.

16 And the only way we figure that out is, if
17 we have the walker, and we have the alleged shanks,
18 and we can do what the Government says they can do.
19 I don't know how. They've told this Court many, many
20 times that the shanks demonstrate a perfect fit with
21 the walker. Well, those are the types of tests or
22 other things that Trombetta talks about. So the next
23 step of Trombetta is, if the evidence was apparently
24 exculpatory before it was lost or destroyed, then,
25 can you show -- what would you have done with that

1 evidence? And we have our expert witness here today
2 prepared to talk about that, and I think we can get
3 that out through some of the testimony you're going
4 to hear today. But is there a perfect fit? Could
5 these pieces have come from this walker? Does it
6 look the same as Mr. Perez' walker? Is it the same
7 type of metal? Is it the same color? Would it fit
8 in the location where the piece was missing? Those
9 types of things, I think the Court has to analyze in
10 determining a Trombetta violation. I mean,
11 Youngblood is, yes, you have to look at bad faith.
12 But with respect to Trombetta, those are the issues
13 that we intend to present to the Court.

14 THE COURT: All right. Are you ready to
15 put on evidence?

16 MR. VILLA: Yes, Your Honor.

17 THE COURT: Mr. Beck, are you handling the
18 argument on this?

19 MR. BECK: I'm going to handle some
20 portions of the legal argument, so can I respond to
21 some of those legal principles.

22 THE COURT: All right. Do you want to make
23 an opening statement?

24 MR. BECK: Sure. I think the Court's
25 initial argument -- initial impressions are correct

1 here, that there is really no basis to suppress the
2 evidence, and there wouldn't be evidence suppressed.
3 There wasn't any apparently exculpatory nature.

4 And I'll point the Court to a couple of
5 Tenth Circuit decisions: United States against
6 Glass, which is 128 F.3d 1398, a 1997 decision, and
7 then a 2006 decision, United States against
8 Pettigrew, 468 F.3d 626. And those cases don't deal
9 with -- I guess what we're talking about on the
10 substantive law, but the procedural law. And what
11 they say is that the Court doesn't need to hold an
12 evidentiary hearing if there aren't contested
13 materials of fact, sort of a civil standard test, as
14 I would take it here.

15 And if the Court looks at the pleadings in
16 this case, and Mr. Perez' contentions, the things
17 that he contends aren't material facts to suppress
18 the evidence. What it is, is it's basically "he said
19 she said." Perez said he wasn't involved. But
20 everyone agrees that the shanks came from the walker;
21 everyone agrees that they fit the walker. Mr. Perez
22 says, "They took it while I was in the shower."

23 So, really, it's a question of who is the
24 jury going to believe? And that is a question for
25 the jury. To suppress evidence of a walker that

1 doesn't exist isn't an appropriate remedy. So I
2 think that was the Court's impression. And I think
3 it's a correct one, is that really what -- I mean,
4 everyone agrees that there was a walker; the shanks
5 came from the walker; and that the walker is gone
6 now. Really, it's a question, will the jury believe
7 the United States' cooperators and officer witnesses,
8 and the photographs that they've seen, or will they
9 believe Mr. Perez' story that: Yes, it was my walker
10 that they took, but I didn't have any part in putting
11 the shanks there.

12 And so -- and the Court can also consider
13 Mr. Perez' statements that were played, I think, a
14 couple weeks ago in court, where he admits that he
15 gave the walker so that the shanks could be made.

16 So I think the point that there wasn't -- I
17 think the point that these statements only came after
18 people were cooperating, I think, is inaccurate. I
19 think Mr. Perez' statements were the first times that
20 the walker came into the picture, that they came from
21 his shank (sic).

22 So I expect that, if the Court holds a
23 hearing, that's the evidence that will come out, is
24 that everyone agrees that the walker doesn't exist;
25 everyone agrees that the shanks came from the walker.

1 I also think that the Court -- I also think
2 that the Court had a point about look at Corrections
3 Department separately from the United States
4 Department of Justice, with the nuance that I think
5 Mr. Villa is correct that, if there is a violation of
6 a person's constitutional rights, regardless whether
7 that was the state actor, you know, the state
8 counterpart or the federal government, obviously
9 that's grounds for suppression.

10 THE COURT: Yeah, I would agree with that.
11 I hope I wasn't -- didn't bungle that that badly.
12 But I was trying to get on this -- all the time I
13 have suppression hearings where it's the State
14 Police; you know, they're doing it, and we determine
15 whether it's a violation.

16 But here, I was trying to think of the
17 parallels in the civil area, where you have to prove
18 bad faith, it would seem to me that it's a little
19 more difficult then to take away probative evidence
20 from the federal government that --

21 MR. BECK: Right. And I think that's where
22 the nuance comes in about objectively exculpatory
23 evidence. And there has to be some quantum of proof
24 that it is exculpatory if the evidence is lost. So
25 if the Court looks at the Court's Harry decision in

1 2011 -- I think it carried on into 2012, that case --
2 you know, there were text messages that everyone
3 agreed were lost. And there was evidence that those
4 were exculpatory text messages that were lost by the
5 Government.

6 The evidence, I assume the Court will hear
7 in the coming day, is that there isn't any dispute --
8 I mean, there isn't any evidence that this was
9 exculpatory evidence, as opposed to inculpatory
10 evidence.

11 So, I think, if the standard were that
12 helpful evidence to the Government is lost, or didn't
13 appear, whether we're talking about the walker, or
14 whether we're talking about the paperwork that we'll
15 hear about later today, there would be very few cases
16 that actually went to the jury, if any. Because
17 either we have the evidence, and so a defendant is
18 going to plead guilty, or we don't have the evidence
19 and the Court dismisses the charges.

20 THE COURT: Do you have any thoughts, so as
21 I keep this law in mind, this distinction that Mr.
22 Villa is drawing between Youngblood and Trombetta,
23 which standard applies here, and what standard I'm
24 going to need to apply in this case?

25 MR. BECK: Not currently. But I

1 certainly -- I anticipate having some thoughts about
2 that by the time we're done today. So I have to look
3 at that. I haven't looked at that issue.

4 THE COURT: You said in your briefing --
5 Mr. Villa, you cited a lot to a case I wrote back in
6 2014, about United States v. Harry. And my memory of
7 that case, and then what you put in there about the
8 case still seemed to talk about bad faith. Isn't
9 that still going to be one of the things you're going
10 to have to establish, is going to be bad faith?

11 MR. VILLA: Your Honor, I think, yes, for
12 purposes of a due process Youngblood-type violation,
13 I think we have to get to bad faith.

14 THE COURT: I'm looking at what you say on
15 page 10, you're quoting me, you say: "The inquiry
16 into bad faith must necessarily turn on the
17 Government's knowledge of the exculpatory value of
18 the evidence at the time it was lost or destroyed.
19 And if I understand the facts at the time, is that
20 they were not focusing on Mr. Perez at all at the
21 time that they were doing the initial arrest,
22 investigation, and prosecution. It was only later
23 that any government began to focus on Mr. Perez. Am
24 I wrong on that?

25 MR. VILLA: Well, to some degree, I think

1 you are, and I think that's why we have to elicit
2 some of these facts. I think that your quote there
3 on page 10 from Harry doesn't change my analysis.
4 The inquiry into bad faith must necessarily turn on
5 the Government's knowledge of exculpatory evidence.
6 So if the Government knows it's exculpatory, it's
7 obviously exculpatory, we have to show bad faith.
8 That's Youngblood.

9 But Trombetta, if it's apparently
10 exculpatory or potential exculpatory, right, this
11 objective standard, then we don't have to show bad
12 faith.

13 And the next step under Trombetta is, Well,
14 what could you have done if they had preserved this
15 stuff and done their job the way they were supposed
16 to?

17 And I disagree with a couple of the factual
18 allegations. We don't agree that the shanks came
19 from the walker. We don't agree that the shanks fit
20 the walker. We don't know that because the evidence
21 was lost. That's the second part of Trombetta.
22 We're not able to make that determination.

23 And we disagree -- I mean, whether Agent
24 Palomares is willing to admit to it or not, he was
25 told by Mr. Perez that the walker was in play. And

1 because, under Trombetta, we submit it's an objective
2 standard, it doesn't matter what he subjectively
3 believed.

4 THE COURT: But aren't you going to have to
5 establish that it was the exculpatory value of Mr.
6 Perez' walker that was apparent; not that the walker
7 was in play, but that the exculpatory value of the
8 walker was apparent. If anything, it was
9 inculpatory. It was establishing that Mr. Perez was
10 involved, or at least something that he had was
11 involved. And they never did -- the state folks
12 never did anything with it.

13 MR. VILLA: That's the second piece. And I
14 think you'll hear evidence about that. And that gets
15 me to the wheelchair program, in that there was
16 evidence within the same timeframe, within a couple
17 of weeks, from the informants primarily, that metal
18 was coming into this particular pod from the
19 wheelchair program.

20 Jason Wright is here today. He's -- I
21 believe he will testify about that. He told STIU
22 agents -- or excuse me, a couple of folks told STIU
23 agents that Jason Wright, as well as three or four
24 others in blue pod were getting metal into the
25 wheelchair program.

1 It's our contention that it is absolutely
2 plausible that these shanks were not from Mr. Perez'
3 walker, but from another walker or another source out
4 of the wheelchair program. And they knew that within
5 a couple weeks of this investigation.

6 We don't know when the walker was disposed
7 of. We don't even know -- and, Your Honor, I'll show
8 you on the Elmo here -- this photo, which is going to
9 be admitted, because the Government agrees, is one of
10 the few photos that have been produced in discovery,
11 that we think the Government is going to say is Mr.
12 Perez' walker. But we don't know that. There isn't
13 a single piece of paper in this evidence documenting
14 the confiscation of Mr. Perez' walker. The
15 centerpiece of the Government's case against Mr.
16 Perez here is that the shanks came from a walker. I
17 don't know if they're going to say it's this walker.
18 It's produced in discovery along with some other
19 pictures of the shank, and the same sort of set of
20 photographs. So I think that's the Government's
21 theory. But I don't know.

22 I don't know what Agent Palomares, or the
23 other individuals who are going to testify today, are
24 going to say about this walker. Why was it taken
25 into this room, wherever this room is, looks like

1 maybe somebody's office. Why was it photographed?

2 And then, when you take that information,
3 and you couple it with what Mr. Perez' says to Agent
4 Palomares, which is, I don't know. I mean, the piece
5 is missing, but that doesn't mean it had anything to
6 do with this murder. Maybe it did; maybe it didn't.
7 But Mr. Perez tells him, "I'm not involved. I didn't
8 do anything wrong. Tell STIU I didn't do anything
9 wrong."

10 So the value, then, becomes exculpatory
11 immediately, or the potential value, because there is
12 metal coming in from the wheelchair program. There
13 is information within the first two weeks that there
14 is lots and lots of shanks in this pod. There is
15 contradictory information about which one of the
16 actual hands-on killers used which shank.

17 And, therefore, having the walker -- I
18 mean, perhaps, if you have it, and you can do the
19 testing on it, it becomes inculpatory. But it also
20 might be exculpatory. So it has potential
21 exculpatory value, and, therefore, you preserve it.
22 It was seized for a reason. It was photographed for
23 a reason. This photograph -- I don't know when it
24 was taken, we're hoping to explore that with these
25 witnesses. But I think that all dictates whether

1 these agents knew it had potential exculpatory value
2 before they lost or destroyed it.

3 THE COURT: All right. Well, are you ready
4 to put on your first witness or evidence?

5 MR. VILLA: We are. There is a little bit
6 of housekeeping. So that the Government and Mr.
7 Perez have stipulated to all these exhibits, which
8 they're all marked, and we can move to admit them
9 now, and we'll use them as we go along, if that's
10 okay with the Court.

11 THE COURT: All right. Why don't you go
12 ahead and move their admission?

13 MR. VILLA: So, Your Honor, we've labeled
14 them RP, for Rudy Perez, and then A through MM.

15 THE COURT: A through MM? So is that A
16 through Z, and then you go back and it's AA through
17 MM?

18 MR. VILLA: Yes, Your Honor. So with the
19 Government's agreement, we would move to admit all of
20 those pieces of evidence. Primarily it's reports,
21 photographs, and there is one video. I could go
22 through each, if you'd like.

23 THE COURT: All right. Well, I'll go ahead
24 and admit these. In the future, on the defendants'
25 side -- this is one area that I do have a little bit

1 of a rule -- you go A to Z, and then when you start
2 going back, it's AA, AB, AC. And so then, if you
3 keep going, it's BA, BB, BC. So a little bit of
4 order there; otherwise, we get into seven or eight
5 Zs, and my mind begins to shut down when we have that
6 much lettering going on.

7 But I'll go ahead and admit these. Any
8 objection, Mr. Castellano? Are you going to, or Ms.
9 Armijo?

10 MS. ARMIJO: No, Your Honor, no objection.

11 THE COURT: All right. Any defendant have
12 any objection?

13 Before I start taking evidence, any
14 defendant want to say anything on this motion to
15 suppress? Anything you want to say?

16 All right. Mr. Villa.

17 MR. VILLA: The last other piece of
18 housekeeping is we've also agreed that the Court can
19 incorporate the prior testimony, to the extent it
20 matters, and we'll point the Court to that from last
21 week, with respect to this matter, as well as the
22 suppression hearings that we're going to hear later
23 today or tomorrow, including the Government's
24 exhibits that have been admitted already.

25 THE COURT: All right. You may have to

1 help me figure out what's relevant out of that.

2 MR. VILLA: Absolutely.

3 THE COURT: All right.

4 MR. VILLA: With that, Your Honor, we would
5 call Agent Palomares from the New Mexico State
6 Police.

7 THE COURT: Mr. Palomares, if you'll come
8 up and stand next to the witness box on my right,
9 your left. Before you're seated, Ms. Standridge, my
10 courtroom deputy, will swear you in.

11 ANTONIO PALOMARES,
12 after having been first duly sworn under oath,
13 was questioned and testified as follows:

14 DIRECT EXAMINATION

15 THE CLERK: Please be seated and state your
16 name for the record.

17 THE WITNESS: Antonio Palomares.

18 THE COURT: Mr. Palomares. Mr. Villa.

19 MR. VILLA: Thank you, Your Honor.

20 BY MR. VILLA:

21 Q. Mr. Palomares, how are you employed?

22 A. I'm employed by New Mexico State Police.

23 Q. What is your title?

24 A. I'm a sergeant.

25 Q. So is it okay if I refer to you as Sergeant

1 Palomares?

2 A. Yes, sir.

3 Q. How long have you been employed by the New
4 Mexico State Police?

5 A. Eleven years.

6 Q. Prior to that, were you in law enforcement?

7 A. No.

8 Q. When you became employed with the New
9 Mexico State Police, did you go to the law
10 enforcement academy?

11 A. Yes, I did.

12 Q. That's in Santa Fe?

13 A. Yes.

14 Q. You became a certified law enforcement
15 officer?

16 A. Yes.

17 Q. What year was that?

18 A. 2006.

19 Q. At the academy did you receive training
20 with respect to investigations?

21 A. I was an officer, so not at the time.

22 Q. When did you become -- well, let me ask you
23 this: After you were an officer and worked on the
24 streets, did you do patrol?

25 A. Yes.

1 Q. Did you -- at some point you become an
2 investigator or detective?

3 A. Yes, I did.

4 Q. When was that?

5 A. 2014.

6 Q. And was there some process that you went
7 through to become -- what do they call it?
8 Investigator? Detective?

9 A. Yes, basically, an agent for State Police
10 Investigations Bureau.

11 Q. So can I refer to that as a detective?

12 A. Yes.

13 Q. What process did you go through to become a
14 detective?

15 A. Oh, there is some tests you've got to take
16 through the State Police, some interviews. And
17 eventually they choose the most qualified person for
18 the position.

19 Q. Do you receive training at some point about
20 conducting investigations?

21 A. Yes.

22 Q. Is that after you become an investigator?

23 A. Correct.

24 Q. Can you tell me briefly about that
25 training?

1 A. There is different trainings, whichever we
2 put in for some type of investigations, interviews,
3 how to deal with -- so it's interviews, any type of
4 confidential informants.

5 Q. So, as of 2014, you were a detective?

6 A. I promoted to detective in 2014. I worked
7 as a detective for three years, and last year I
8 promoted to sergeant. Now I'm a sergeant with the
9 Investigations Bureau.

10 Q. So you supervise other investigators and
11 detectives?

12 A. Yes, sir.

13 Q. When did you -- what month in 2014 did you
14 become a detective?

15 A. It was the first of the year.

16 Q. January?

17 A. Yes, sir.

18 Q. And the training you received, was that
19 before January or during January?

20 A. It was after.

21 Q. After?

22 A. Yes.

23 Q. Can you tell me what month you received the
24 training?

25 A. I don't recall.

1 Q. In the spring and summer?

2 A. It would be hard to say. I don't recall.

3 There is different classes that we attend.

4 Q. Were you trained on evidence collection?

5 A. I don't think so.

6 Q. What about evidence preservation?

7 A. I don't think so.

8 Q. What were you trained on as an investigator
9 with respect to evidence for a crime?

10 A. Well, I mean, I was trained as evidence
11 since 2006, in the academy.

12 Q. Were you trained then about collecting
13 evidence?

14 A. Yes.

15 Q. And preserving evidence?

16 A. Correct.

17 Q. And when I say "preserving evidence," you
18 understand I mean not destroying evidence, losing
19 evidence; making sure that there is a chain of
20 custody for the evidence?

21 A. Correct.

22 Q. Is that fair?

23 A. Yes.

24 Q. And were you trained on the Department of
25 Public Safety's policies and procedures with respect

1 to evidence and property handling?

2 A. Yes.

3 Q. All right. I'm going to show you on your
4 screen there -- you should be able to see that --
5 what's already been admitted as Defendant's Exhibit
6 RP-MM. Have seen that before?

7 A. I seen it. I haven't seen it lately, but
8 yes, that's evidence property handling from the
9 Department of Public Safety.

10 Q. Is that the policy and procedure that was
11 in effect in 2014 for the Department of Public
12 Safety?

13 A. I'm not sure. The policies change over
14 time. So I don't know if that's the same one or not.

15 Q. Are you able to tell me when this
16 particular policy was changed or amended? I'll let
17 you answer that question?

18 A. According to the one we have here, it says
19 effective date, 3/12/2012.

20 Q. And can you tell me when, if you know, or
21 if ever this particular policy was changed?

22 A. I don't know that.

23 Q. Would you agree with me that this was the
24 appropriate policy in effect, at least as of March
25 12, 2012?

1 A. Yes.

2 Q. This is the policy that you, as a State
3 Police Officer, were required to know about, right?

4 A. Correct.

5 Q. And to follow?

6 A. Yes.

7 MS. JACKS: For the record, is there an
8 exhibit number?

9 MR. VILLA: Yes, it's RP-MM.

10 Q. Agent Palomares, you investigated the
11 homicide -- the alleged homicide of Javier Molina
12 that occurred at the Southern New Mexico Correctional
13 Facility; is that true?

14 A. I did.

15 Q. And that investigation began March 7, 2014?

16 A. Correct.

17 Q. Let me ask you this: You came to the
18 Southern New Mexico Correctional Facility that
19 evening about 7:15, March the 7th; is that correct?

20 A. Yes.

21 Q. And following this investigation, initially
22 at least, you prepared some search warrants for DNA?

23 A. Correct.

24 Q. And those were individuals that you
25 believed might have had a role in this investigation;

1 correct?

2 A. Yes.

3 Q. I'm going to show you what has already been
4 admitted as Defendant's Exhibit RP-D. It is a search
5 warrant for Jerry Montoya; correct?

6 A. Yes.

7 Q. I'm going to turn the page to the next
8 page. This is an affidavit for search warrant for
9 that same Jerry Montoya?

10 A. Yes.

11 Q. You prepared this affidavit; correct --

12 A. I did.

13 Q. -- based on, at least part of the
14 investigation you were conducting of the Javier
15 Molina homicide?

16 A. Yes.

17 Q. Now, you understood that at least on March
18 7, 2014, Mr. Molina had been assaulted by at least
19 two inmates in the Southern New Mexico Correctional
20 Facility?

21 A. Two inmates or four inmates?

22 Q. Well, when I say assaulted, I mean the
23 individuals who were actually seen stabbing him.

24 A. I don't understand your question. I mean,
25 there was four people involved.

1 Q. Okay. Why don't you tell me who the four
2 people were involved, as you understood it?

3 A. It was Jerry Armenta; Jerry -- I forgot his
4 last name. I'd have to see the paperwork.

5 Q. Would that have been Jerry Montoya?

6 A. Yes. Mario Rodriguez and Timothy Martinez.

7 Q. And that evening, when you came to
8 Southern, you were shown a video of the assault;
9 correct?

10 A. Correct.

11 Q. That was a video that is captured from
12 video cameras within the pod where the assault
13 occurred?

14 A. Yes.

15 Q. And on that video, you were -- or at least
16 informed by others the identities of these four
17 individuals that were involved in the assault?

18 A. Yes.

19 Q. Who informed you of that?

20 A. It was -- I don't recall names. STIU from
21 Corrections.

22 Q. What is STIU?

23 A. Security Threat Intelligence Unit.
24 Basically, correctional officers.

25 Q. Were they assisting you in this

1 investigation?

2 A. Yes. I mean, they were on scene there.

3 They work there.

4 Q. They were helping you identify who these
5 individuals were?

6 A. Correct.

7 Q. Now, would you agree with me that the video
8 that you saw, you saw it about 8:20 p.m. that
9 evening?

10 A. That's fair to say.

11 Q. Okay. And I'm not actually going to play
12 this video. It's already been admitted as evidence
13 as RP-C. The video of the Javier Molina murder,
14 would you -- if you recall, is approximately 17, 18
15 minutes long?

16 A. Possibly, yes.

17 Q. Let me show you Exhibit RP-E. This is a
18 New Mexico Correctional Department Inmate Misconduct
19 Report prepared by -- I'll show you the last page,
20 second to the last page -- Daniel Blanco?

21 A. Okay.

22 Q. And it indicates Daniel Blanco is a
23 Captain?

24 A. Yes.

25 Q. Who is Captain Daniel Blanco?

1 A. At the time he was a Captain for STIU at
2 the Corrections Department.

3 Q. And did you work with him in investigating
4 the Javier Molina homicide?

5 A. Yes, he was there as well.

6 Q. Now, this particular document that I've
7 shown you discusses timeframes from the video of the
8 Javier Molina homicide, does it not?

9 A. I haven't read it.

10 Q. Have you ever seen this document before?

11 A. Yes.

12 Q. Okay. Do you remember when the last time
13 you read it?

14 A. I don't remember.

15 Q. Okay. Do you agree with me that this
16 document discusses various timeframes as things occur
17 in the video?

18 A. I can't agree with it because I haven't
19 read it.

20 Q. Would you like to look at it?

21 A. Sure.

22 MR. VILLA: May I approach?

23 THE COURT: You may.

24 Q. Have you read the document?

25 A. I read the first part. It shows times and

1 dates.

2 Q. And do you recall, when you watched the
3 video, knowing that there were times and dates
4 related to that video?

5 A. Yes, sir.

6 Q. And did you watch the video with Captain
7 Blanco?

8 A. I don't know if he was there at the time I
9 was shown the video. Numerous STIU members were
10 there at the scene of the video. So I'm not sure who
11 was there at the time. But I was shown a video by
12 STIU.

13 Q. Where were you when you were shown the
14 video?

15 A. I believe it was in the STIU office.

16 Q. Whose office?

17 A. STIU.

18 Q. It's just generally the STIU, or is there
19 an individual in STIU that has an office?

20 A. It's a squad room for STIU. They have
21 their own cubicles or computers.

22 Q. It's what kind of room? I'm sorry?

23 A. It's a squad room where they have their
24 computers.

25 Q. A squad room?

1 A. Yes.

2 Q. So you were there, and there were a number
3 of other individuals there?

4 A. Correct.

5 Q. How did they get the video?

6 A. How did they get it?

7 Q. Well, let me back up a little bit.

8 The video is from within the pod; correct?

9 A. Correct.

10 Q. There is a couple of different camera
11 angles?

12 A. Yes.

13 Q. And the camera angles cover the entire pod?

14 A. Correct.

15 Q. And so my question to you is: Do you know
16 how that video came from wherever it was recording
17 from the pod into the STIU squad room where you were
18 able to view it?

19 A. I don't know how that works. I was shown a
20 video. So I don't know how they -- I wasn't sure how
21 they got video. I'm not sure of your question.

22 Q. Okay. So you don't know?

23 A. I don't know. I mean, I was shown a video.

24 Q. But you don't know how they captured it?

25 A. It captures the pod with two different

1 angles on the camera.

2 Q. I understand that. But you don't know how
3 whatever you were being shown in the squad room was
4 recorded so that you could see it?

5 A. Right, yes.

6 Q. You don't know that? Is that true? I
7 mean, you didn't ask them: How did you record this
8 so I can watch it here now?

9 A. No, I didn't go into that detail.

10 Q. Did you ask them how far back the video
11 would capture recordings before it, say, recorded
12 over or deleted?

13 A. No.

14 Q. Were you ever shown any other video beside
15 the video you saw at the STIU squad room?

16 A. I don't think so.

17 Q. And the video, you were able to use for the
18 preparation of your affidavit for a search warrant
19 for Jerry Montoya; is that true?

20 A. Yes.

21 Q. And on -- I believe -- excuse me, starting
22 at page 3 of your affidavit -- it indicates that
23 Sergeant -- the last paragraph on the bottom there --
24 Sergeant Archuleta advised that 1 A B pod video
25 cameras recorded the incident; true?

1 A. Correct.

2 Q. So Sergeant Archuleta is of STIU?

3 A. Yes.

4 Q. He told you that? Was Sergeant Archuleta
5 the one that told you there was video from the pod?

6 A. Possibly. He probably did.

7 Q. Okay. And it indicates, the last sentence
8 there, at 8:20 you were shown the video recordings of
9 the incident?

10 A. Correct.

11 Q. All right. Now, the remainder of your
12 affidavit documents the times and things that are
13 seen on the video; correct?

14 A. Yes.

15 Q. And it identifies the individuals in the
16 video; true?

17 A. Correct.

18 Q. And you didn't know who those individuals
19 were; correct?

20 A. I was given names.

21 Q. By STIU?

22 A. Yes.

23 Q. Because they knew who they were?

24 A. Yes.

25 Q. So they would have told you -- this is --

1 for instance, on your paragraph that I'm pointing to
2 here, in the middle where it begins, "At
3 approximately 5:16:03, Inmate Rodriguez" -- they told
4 you when you're watching the video that's Inmate
5 Rodriguez, right?

6 A. Yes.

7 Q. So they were helping you with this
8 investigation?

9 A. Correct.

10 Q. And you also identified Inmate Montoya as
11 an individual that's involved in the assault;
12 correct?

13 A. Correct.

14 Q. And Inmate Martinez; true?

15 A. Yes.

16 Q. That's Timothy Martinez?

17 A. Yes.

18 Q. And Inmate Jerry Armenta, which you
19 testified about; correct?

20 A. Yes.

21 Q. And all of those individuals, the
22 identities were provided to you by STIU?

23 A. Correct.

24 Q. The same individuals that were showing you
25 this video?

1 A. Correct.

2 Q. And you used that to prepare this affidavit
3 to get DNA from those four individuals; correct?

4 A. Yes.

5 Q. This particular document, RP-D, is just for
6 Jerry Montoya. But you used the same affidavit for
7 the other three individuals, didn't you?

8 A. I used different search warrants; same
9 affidavit for all four.

10 Q. Okay. Relying on the evidence from the
11 video?

12 A. Correct.

13 Q. And I'll represent to you, by agreement of
14 the prosecution, that this video is on RP-C, just so
15 that you know that.

16 But I wanted to make sure that, other than
17 the video you've discussed in your affidavit, did you
18 capture any other video in connection with this
19 investigation?

20 A. No.

21 Q. Did STIU, to your knowledge, capture any
22 other video with respect to this investigation?

23 A. I don't know that.

24 Q. Now, as you arrived at Southern -- and when
25 I say "Southern," I'm just referring to the prison;

1 that's okay?

2 A. Yes.

3 Q. And when you arrived at Southern, there
4 were some other officers there from State Police
5 helping you with the investigation along with these
6 STIU officers; correct?

7 A. Yes.

8 Q. And a K-9 officer came with a K-9; correct?

9 A. Yes, that was a correctional officer.

10 Q. I'm sorry. So there was a correctional
11 officer from Southern that had a K-9; right?

12 A. Correct.

13 Q. And the K-9 went into the pod where this
14 alleged homicide occurred, right?

15 A. Yes.

16 Q. What kind of K-9 was that? Was it a drug
17 sniffing dog, or something else?

18 A. I don't know that.

19 Q. Do you know what the purpose of bringing
20 the K-9 into the pod was?

21 A. Looking for any type of narcotics or -- I
22 wasn't sure, positive -- weapons.

23 Q. Let me show you what has already been
24 admitted as Defendant's RP-F. This is a diagram of
25 the lower cells anyway, in the pod where Javier

1 Molina was allegedly murdered; correct?

2 A. Correct.

3 Q. And it indicates on the top of the pod is B
4 pod 1 A?

5 A. Yes.

6 Q. Do you know if it's referred to shorthand
7 as blue pod?

8 A. Yes, I believe so.

9 Q. Is it okay if I call it blue pod?

10 A. Yes, that's fine.

11 Q. So this first page of this exhibit shows
12 you where the cells are along the edges of the pod;
13 correct?

14 A. Correct.

15 Q. And the common room, and that sort of
16 thing?

17 A. Yes.

18 Q. And would you agree with me that these
19 cells are on the bottom floor of the pod, and the pod
20 is two floors?

21 A. I believe that's the top floor.

22 Q. Well -- so let me point you to the top of
23 this document where it says "depicting lower level"?

24 A. Correct.

25 Q. So this is the lower level of the pod?

1 A. Yes.

2 Q. Now, I'll show you the second page, so you
3 can see it. That's the upper level of the pod;
4 correct?

5 A. Correct.

6 Q. So the lower level of the pod -- and on
7 this diagram, which is prepared, it indicates where
8 certain things were found. For instance, bloodstains
9 are documented, where I'm pointing to the lower
10 right-hand corner of the diagram, near the main
11 entrance; is that true?

12 A. Correct.

13 Q. And you're aware here -- I'm pointing to
14 cell 115 -- that that's the cell where Mr. Rudy Perez
15 was housed?

16 A. I believe so, yes.

17 Q. Do you have any reason to believe that's
18 incorrect?

19 A. No, sir.

20 Q. Now, do you know that the K-9 went into
21 each of the cells in the pod?

22 A. I believe so.

23 Q. Are you aware that the K-9 apparently
24 alerted to cell -- some other cells -- but to cell
25 115?

1 A. I don't recall if it alerted to 115. I
2 think it alerted to two cells. I can't remember
3 which ones.

4 Q. Do you know if any evidence was discovered
5 as a result of those alerts?

6 A. I don't think so.

7 Q. Now, I think you testified that you weren't
8 sure if the K-9 alerted to cell 115?

9 A. I don't think any evidence was collected
10 from the K-9 search.

11 Q. Okay. I understand that. But you weren't
12 sure if the K-9 had alerted to cell 115?

13 A. I would have to review my reports. I know
14 it alerted to two holding cells. I'm not sure if 115
15 was one of those holding cells.

16 Q. If I showed you your report, would that
17 refresh your recollection?

18 A. Yes, sir.

19 MR. VILLA: May I approach, Your Honor?

20 THE COURT: You may.

21 Q. Agent Palomares, let me show you the cover
22 of what's called Supplemental No. 2. Is that a
23 report you prepared?

24 A. Yes, I did.

25 Q. And it begins at Bates 1591, so people can

1 follow along.

2 On Bates 1602, will you look at what I've
3 highlighted. Don't read it out loud, just let me
4 know if that refreshes your recollection.

5 A. Yes, sir. According to my reports, the K-9
6 alerted to holding cell 108 and 115.

7 Q. 115 being the cell that Mr. Perez was
8 housed in?

9 A. Yes, sir.

10 Q. But you don't know -- well, you know that
11 no evidence was recovered as a result of the alert,
12 but you don't know what the K-9 necessarily was
13 alerting for?

14 A. Correct.

15 Q. Whether it was drugs or bombs or weapons or
16 something else?

17 A. I believe it was drugs at the time.

18 Q. Now, a little while later, you were
19 present, were you not, for a debriefing -- this is
20 now March 8, 2014, at 4:30 a.m.?

21 A. Yes.

22 Q. And at that debriefing, there were agents
23 from the State Police present; correct?

24 A. Correct.

25 Q. And agents from -- well, I don't know if

1 they're agents -- but STIU officers from the
2 Department of Corrections?

3 A. Yes.

4 Q. Who was present?

5 A. There was a lot of people there, basically
6 involving -- from state police personnel to
7 corrections personnel, from correctional officers to
8 supervisors.

9 Q. What was the purpose of the debrief?

10 A. The purpose of the investigation, to see if
11 we had any other leads at the time that we'd
12 investigate, just to make sure we cover everything on
13 our investigation.

14 Q. And what were the leads that were discussed
15 at that point?

16 A. At that point, it was just -- the only
17 information that we had was a video. So, you know,
18 we wanted to make sure that we recover all the
19 evidence, conducted interviews.

20 Q. And so, at some point, you did learn that
21 this alleged homicide on Javier Molina was carried
22 out purportedly as an SNM hit, I mean, it was
23 ordered; correct?

24 A. Not on this date.

25 Q. Well, not necessarily on March 7. But you

1 learned at some point that this was allegedly an
2 SNM-ordered hit?

3 A. Yes.

4 Q. And on what date did you say you learned
5 that?

6 A. I don't remember a date. Possibly --
7 maybe -- once I -- well, we went back -- I went back
8 to the scene once, on March 7 -- well, March 8, we
9 left the location. I went back on March 10, 2014.
10 At that point I learned there was some type of orders
11 that were sent to commit the crime.

12 Q. You mean orders -- the orders from an SNM
13 Gang member to assault Javier Molina?

14 A. Correct.

15 Q. How did you learn that information?

16 A. That was information that came through
17 STIU.

18 Q. They provided you the information?

19 A. Yes.

20 Q. How did you understand they learned the
21 information?

22 A. I wasn't sure. I was assuming they spoke
23 to SNM -- to the inmates that were involved. I'm not
24 sure.

25 Q. And as you sit here today, do you know how

1 they first discovered this alleged hit?

2 A. I wasn't sure.

3 Q. Are you aware that STIU discovered this on
4 March 8, 2014?

5 A. No.

6 MR. VILLA: Well, let me -- may I approach
7 again, Your Honor?

8 THE COURT: You may.

9 Q. I need to get this back from you, Agent.

10 A. Okay.

11 Q. That report of Captain Blanco's, that I
12 showed you, which is Defendant Rudy Perez's Exhibit
13 E, right above Mr. Blanco's signature, it indicates,
14 does it not, that on March 8, 2014, STIU members
15 conducted interviews with all SNM members housed in
16 Unit 1 A?

17 A. Yes.

18 Q. And 1 A, that's the blue pod, right?

19 A. Yes.

20 Q. And it indicates that, "At the conclusion
21 of the interviews information was obtained which
22 indicated Inmate Molina was to be moved on" --
23 parenthetical assaulted -- "due to paperwork that was
24 brought from Santa Fe with SNM members; correct?

25 A. Is that a question?

1 Q. This report indicates that, does it not?

2 A. Yes.

3 Q. And when you went back on March 10th, you
4 learned about that as well?

5 A. I learned their orders came from -- we were
6 told a name by the name of "Pup." I can't remember
7 his name. That's what I learned, that the orders
8 came from a different leader of the gang.

9 Q. And on March the 10th, you then conducted
10 some interviews yourself of some of the inmates;
11 correct?

12 A. Correct.

13 Q. Isn't it true that you interviewed Mr. Rudy
14 Perez?

15 A. I did.

16 Q. And when you interviewed him, he told you
17 that during the homicide he was in his room?

18 A. Correct.

19 Q. Right?

20 A. Yes.

21 Q. He said: "If you don't believe me, you can
22 get the tape," right?

23 A. Yes.

24 Q. And do you recall whether you saw Mr.
25 Perez, from the video that you observed?

1 A. I don't recall my -- I was more concerned
2 on the people involved with the incident. There were
3 numerous inmates that were in view. I don't -- I
4 didn't pay attention to that. I was paying attention
5 to the inmates who were involved in the altercation.

6 Q. And so you didn't see Mr. Perez being
7 involved in the altercation?

8 A. No.

9 Q. And you did not ask for any video, say, of
10 the day before, a couple days before that, to try to
11 determine how this paperwork got passed around?

12 A. No, sir.

13 Q. Were you aware that the video system at
14 Southern went back approximately 23 days?

15 A. No.

16 Q. Did you ever ask that question?

17 A. I don't recall.

18 Q. Do you know if the STIU agents that were
19 involved in this investigation were aware of the
20 video system's capabilities?

21 A. I don't know that.

22 Q. And during the interview that you conducted
23 of Mr. Perez, he told you that STIU took his walker
24 from him, didn't he?

25 A. Correct.

1 Q. He didn't tell you that it was a
2 wheelchair; he told you it was a walker?

3 A. Correct.

4 Q. And he told you that STIU had told him that
5 there was a piece missing from his walker, right?

6 A. He said something was missing from his
7 walker.

8 Q. And that was the reason STIU took it from
9 him?

10 MS. ARMIJO: Objection; calls for
11 speculation.

12 THE COURT: Well, I'm going to allow him to
13 testify, because I think a lot of this goes to -- I'm
14 still focusing on bad faith. So I've got to know
15 what his knowledge is. And if he's -- if he has some
16 idea as to where evidence is or things, I think that
17 may play into it, so I'm going to probably be fairly
18 broad here. Overruled.

19 BY MR. VILLA:

20 Q. Go ahead, Agent.

21 A. He said, "They took it away from me," so I
22 understood as correctional officers.

23 Q. And you understood that the reason -- or at
24 least you suspected that the reason the walker was
25 taken from him was related to a piece being missing

1 from it?

2 A. Correct.

3 Q. And he said that it had just happened; they
4 had just taken it from him, right?

5 MS. ARMIJO: Your Honor, I'm going to
6 object to the leading nature now, at this point.

7 THE COURT: Well, I'm assuming that this is
8 more your witness than it is Mr. Villa's. So I'm
9 going to let him get the information out however he
10 wants.

11 MS. ARMIJO: Your Honor, I just note that
12 he is not in any way appeared to be hostile. And
13 this is his burden. So we would object, because
14 there is no hostility here. And he should be put to
15 the same rules as all parties.

16 THE COURT: Well, I'm going to let him
17 conduct the examination the way he wants. Overruled.

18 Q. Do you remember the question?

19 A. Can you replay again? Repeat?

20 Q. Sure. Mr. Perez told you that it had just
21 happened, they had just taken the walker?

22 A. Yes, he mentioned something about his
23 walker taken away from him on March 8 -- I'm sorry,
24 March 10th.

25 Q. Just a couple days after the homicide?

1 A. Correct.

2 Q. The homicide was March 7?

3 A. Yes, sir.

4 Q. And you were there to talk to him about the
5 Javier Molina homicide?

6 A. Yes, that was on March 10th.

7 Q. And in response to the questions you had of
8 him about the Javier Molina homicide, he conveys to
9 you that his walker had been taken from him?

10 A. Correct.

11 Q. And that's sort of close to the beginning
12 of the interview; do you remember that?

13 A. Yes, sir, I think so.

14 Q. And later in the interview he repeats to
15 you again that they said -- "they" being STIU or a
16 CO -- that a piece was missing off of his walker?

17 A. Correct.

18 Q. And he told you that he thought it came up
19 missing when he was in the shower?

20 A. Yes.

21 Q. He told you he didn't know who took it,
22 right?

23 A. He knew, he had an idea, and he was going
24 to handle it on his own.

25 Q. Okay. So he said: I suspect I know who

1 took it -- didn't tell you any names -- but said he
2 was going to take care of it?

3 A. Correct.

4 Q. Okay. And he also told you, did he not,
5 that -- referring to the homicide of Javier Molina --
6 that he didn't know there was anything going on; he
7 didn't know there was problem with Javier Molina?

8 A. Correct.

9 Q. He didn't know that -- if this was a hit,
10 he didn't know it was going to happen?

11 A. Correct.

12 Q. And he wasn't involved?

13 A. Correct.

14 Q. So let me back up. Well, let's do this.

15 MR. VILLA: May I approach, Your Honor?

16 Q. Agent Palomares, I'm showing you what's
17 been already admitted as Mr. Perez' Exhibit LL. It's
18 a transcript of the interview that you and I just
19 discussed, is it not?

20 A. I'm not sure I have ever seen this paper
21 before.

22 Q. Would you like to go ahead and look at it?

23 THE COURT: Ms. Fox-Young, why don't you
24 check on Mr. Perez, to make sure -- this is all his
25 stuff here, so make sure he's doing okay.

1 MR. VILLA: Thank you, Your Honor.

2 THE COURT: Mr. Villa.

3 Q. Would you like to look at that, Agent, to
4 see if you recognize it?

5 A. I've never seen it. What do you mean to
6 "look at it"?

7 Q. Let's do it this way: The cover page is
8 State of New Mexico versus Jerry Armenta, right?

9 A. Yes, sir.

10 Q. And there was a state prosecution of Jeremy
11 Armenta, was there not?

12 A. Yes.

13 Q. You were the case agent for that
14 prosecution on that case, were you not?

15 A. Yes.

16 Q. And on the cover page it has listed an
17 attorney for the State of New Mexico, right?

18 A. Correct.

19 Q. Who is that?

20 A. It's Daniel Dougherty.

21 Q. You worked with Mr. Dougherty in
22 prosecuting this case.

23 A. Yes, I did.

24 Q. And it has listed there the attorney for
25 Mr. Armenta; Gary Mitchell, right?

1 A. Correct.

2 Q. And isn't it true that Mr. Mitchell, at
3 some point, interviewed you in preparation for this
4 trial?

5 A. I don't recall. It's been three or four
6 years.

7 Q. So I'll represent to you this transcript
8 came from the DA's office, and that's how I came to
9 have it. But you've never seen it before?

10 A. I don't recall, sir.

11 Q. Okay. Well, maybe on a break I'll ask you
12 to look at it a little closer and see if it's the
13 transcript of the interview you and I were just
14 discussing. Okay?

15 A. I'm sure -- I mean -- it's the interview,
16 so I'm sure that's the interview that I conducted.

17 Q. You are sure?

18 A. Yes, sir. I mean, if it's the paperwork,
19 yes.

20 Q. Okay. And I think I discussed this -- so
21 excuse me if I'm repeating myself -- but at any point
22 in time, did you ever go back, with the video system
23 at Southern, and look to see if you could determine
24 anything about this paperwork business on Javier
25 Molina?

1 A. Going back to Southern?

2 Q. Going back and looking at the video. Maybe
3 not the day of the homicide, maybe the day before, or
4 12 hours earlier, some point in time, to see if you
5 can discern how this whole hit was orchestrated.

6 A. No, sir.

7 Q. And you did understand -- I think you said
8 this -- but you understood that there was some
9 paperwork that came down from Santa Fe to Southern,
10 and was passed around in the pod, and that was the
11 paperwork that led to the hit on Javier Molina?

12 A. Not at the time, I didn't know anything
13 about paperwork. I knew that orders came from Santa
14 Fe.

15 Q. Okay. Did you, at any point in time, go
16 back into this video and look and see if you could
17 determine -- see somebody go in, say, Mr. Perez' room
18 and fiddling with his walker?

19 A. I had no reason it, to go back.

20 Q. Okay. After the interview -- or let me
21 just make sure I'm clear with my question -- after
22 the interview of Rudy Perez, did you ever go back and
23 look at the video to see if you saw somebody taking
24 his walker or messing with his walker?

25 A. I probably reviewed the video. It was an

1 ongoing investigation. I wasn't concerned with the
2 walker. I was concerned on the investigation that
3 took place at the time of the incident.

4 Q. Okay. And I'm not asking about your
5 concerns or your thoughts. I'm just asking whether,
6 after this interview with Mr. Perez, you went back to
7 look at the video and see if you saw somebody going
8 into Mr. Perez' room and messing with his walker?

9 A. I mean, that's my question. I wasn't
10 concerned on the walker. I was concerned on the
11 investigation.

12 Q. And I believe you. I understand you
13 weren't concerned. But I just want to know what you
14 did and what you didn't do.

15 A. No, I didn't go back and look for a walker.

16 Q. Okay. Maybe look for a time when Mr. Perez
17 went to the shower and somebody went into his room?

18 A. No, sir.

19 Q. You didn't do that?

20 A. No, sir.

21 Q. Did you ever see Mr. Perez' walker?

22 A. I saw the first time on the interview on
23 March 7.

24 Q. Where was it?

25 A. We conducted an interview with him, and

1 he -- when he walked into our office, he had it with
2 him.

3 Q. This is on March the 7th?

4 A. Yes, sir.

5 Q. And during that interview Mr. Perez told
6 you that he didn't see anything; didn't know anything
7 about the homicide?

8 A. Correct.

9 Q. And so you conducted a second interview
10 March the 10th?

11 A. Correct.

12 Q. So the first time that you interviewed him
13 on March the 7th, he came to your office?

14 A. It was at one of the offices there at the
15 correctional facility.

16 Q. And he was using a walker?

17 A. Correct.

18 Q. Did you examine that walker?

19 A. No.

20 Q. Okay. Let me show you what's been marked
21 as Mr. Perez' Exhibit HH. Do you know who took this
22 photo?

23 A. No, I don't.

24 Q. Do you know where this photo was taken?

25 A. No.

1 Q. Are you able to tell me -- well, I guess we
2 could agree this is a walker, right?

3 A. Yes, sir.

4 Q. Can you tell me whose walker it is?

5 A. I don't know that.

6 Q. So you knew on March the 7th that Mr. Perez
7 had a walker?

8 A. Yes.

9 Q. And on March the 10th he didn't have the
10 walker anymore?

11 A. Correct.

12 Q. Let me show you just a few photographs
13 here. This is Defendant Perez' I. Are these
14 photographs that were taken by some state police
15 investigators that you were working with on March the
16 7th?

17 A. Yes.

18 Q. And this is the front door of 1 A blue pod;
19 correct?

20 A. Yes, sir.

21 Q. It's a series of four different photos?

22 A. Yes.

23 Q. And that's how it was on March the 7th?

24 A. Yes.

25 Q. Exhibit J is walking into 1 A blue pod;

1 correct?

2 A. Correct.

3 Q. In the bottom right-hand corner photo you
4 can see what appears to be blood in the left bottom
5 corner of that photo; is that right?

6 A. Yes.

7 Q. Is that where you know Mr. Molina was --
8 had collapsed following the assault?

9 A. Yes.

10 Q. Let me show you K. And I'll switch it in
11 just a minute, but the bottom left-hand corner is
12 that same door walking into blue pod, right?

13 A. Yes.

14 Q. And then, if I rotate the picture, the
15 photograph identified as DSC0012 is sort of a shot
16 into the center of the pod, right?

17 A. Correct.

18 Q. And well, then DSC0011 is the left side of
19 pod, the stairway going up to the second level?

20 A. Yes.

21 Q. Would you agree with me that Mr. Perez'
22 cell -- and it may not be in view here, but on
23 DSC0012, it would be the right-hand side of that
24 photo on the bottom?

25 A. Correct.

1 Q. And from the video you watched, you could
2 see all of the cells, correct, from the two different
3 camera angles?

4 A. I think so. I'm not sure if it covers 115
5 and the one above 115. I'm not sure.

6 Q. Let me show you L. These are also from
7 blue pod, all four of them?

8 A. Correct.

9 Q. And let's focus on the right-hand side,
10 DSC0016, there is a TV there?

11 A. Yes.

12 Q. That TV -- and then there is a phone as
13 well on the right-hand side of DSC0016 -- those are
14 both in the pod; correct?

15 A. Correct.

16 Q. And inmates in the pod can use the phone
17 and the TV?

18 A. I'm assuming, yes.

19 Q. And orienting to the left side of that
20 photograph, that's where the units begin, the cells
21 begin; correct?

22 A. Correct.

23 Q. And that's the side where 115 is?

24 A. Yes.

25 Q. And the other photos, again, are just

1 different shots -- 14 and 13 shots of the inside of
2 the pod?

3 A. Correct.

4 Q. 15, DSC0015, you can see the edge of the TV
5 there sticking out, right?

6 A. Correct.

7 Q. That's the same TV from 16?

8 A. Yes, sir. I'm assuming yes.

9 Q. And I don't want you to assume. You were
10 in there. Does that appear like how it was on March
11 7th?

12 A. It is, but it's the picture from 15 to 16,
13 the picture is different. But, yes, there is a TV
14 there on 16.

15 Q. Got it. That's a different angle?

16 A. Right.

17 Q. And on 15 -- I'm going to point with my
18 finger, and actually I think we can mark this cell.
19 Can you tell me, is that cell 115?

20 A. Correct, yes.

21 Q. All right. And then the last one of this
22 is M. This is just a photo of 115, with the door and
23 then inside of 115; correct?

24 A. Yes, sir.

25 Q. Do you know if, at the time this photo was

1 taken, there was a walker in that cell?

2 A. I don't know that.

3 Q. Do you know these photos to be taken on
4 March 7 or March 8 of 2014?

5 A. Yes, sir.

6 Q. Let me jump over to N. This is a different
7 series of photos that were taken by the defense. Was
8 that also a photo of blue pod?

9 A. Yes.

10 Q. And the telephone we were talking about
11 earlier is in this photo?

12 A. Yes.

13 Q. Now, at the top right-hand corner of the
14 photo -- I'm going to identify, first, this black
15 cylindrical object. Is that a camera?

16 A. I'm not sure.

17 Q. Okay. And over here, above the exit sign,
18 there is another same looking object. Do you know if
19 that's a camera?

20 A. It appears to be a camera, yes.

21 Q. This is C -- or excuse me, O, pretty much
22 the same photo; true?

23 A. Correct.

24 Q. Okay. And now I'm going to show you P.
25 Again, this is a little bit different angle of the

1 blue pod, but it indicates right in the middle of the
2 photo 1 A B pod. That's the blue pod; correct?

3 A. Yes.

4 Q. And again, in the left-hand side center is
5 cell 115?

6 A. Correct.

7 Q. Now, you're familiar with the recovery of
8 what's believed to be the shanks that were allegedly
9 used to assault Javier Molina, are you not?

10 A. Yes.

11 Q. One of the shanks was found in the blue pod
12 in a trash can; correct?

13 A. Yes.

14 Q. And another one was found upstairs in the
15 shower drain?

16 A. Correct.

17 Q. And if I understand it correctly, from your
18 observations of the video, you saw Mr. Armenta to be
19 one of the people that appeared to be stabbing Javier
20 Molina; correct?

21 A. Correct.

22 Q. And Mr. Armenta then goes to the trash can
23 where a shank is found, and it looks like he drops an
24 object in there?

25 A. Correct.

1 Q. The other shank that ends up in the shower
2 drain, Mario Rodriguez is seen getting that shank and
3 going into the shower; correct?

4 A. Correct.

5 Q. And that's the shank that came from Jerry
6 Montoya; did it not?

7 A. Yes.

8 Q. Jerry Montoya was the other person alleged
9 to be -- or on video appeared to be stabbing Javier
10 Molina; correct?

11 A. Correct.

12 Q. So we have two -- I'll call these
13 individuals "stabbers," right?

14 A. Yes.

15 Q. Mario Rodriguez and Timothy Martinez, who
16 you also got affidavits for DNA for, were not seen
17 stabbing Mr. Molina; correct?

18 A. Correct.

19 Q. They were just seen going into his room and
20 coming out right before the two stabbers went in?

21 A. Yes.

22 Q. And then Mr. Rodriguez, who we just
23 discussed, put one of the shanks in the shower drain?

24 A. Yes.

25 Q. Okay. So let's focus on Mr. Armenta. You

1 see him on the video. He appears to be stabbing
2 Javier Molina. And then he puts an object in the
3 trashcan, which is in the downstairs portion of the
4 pod; correct?

5 A. Yes.

6 Q. And I want to show you Mr. Perez' Y. These
7 are photographs of -- at least the first three --
8 225, 226, and 227, are photographs of the shank that
9 was recovered from the trashcan; correct?

10 A. Correct.

11 Q. Same trashcan that you saw Mr. Armenta
12 appear to put an object in right after the assault?

13 A. Yes.

14 Q. And this particular shrank was then taken
15 out, and put into a box for evidence collection,
16 right?

17 A. Yes.

18 Q. And it's a dark picture. But you can see
19 the shank in the box in 228, right?

20 A. Yes.

21 Q. So let me show you Z. That's the same
22 shank from the trashcan; correct?

23 A. Yes.

24 Q. All four of the photos in Z?

25 A. Yes.

1 Q. This is a shank that had some sort of
2 cellophane or tape wrapped around the end of it?

3 A. Correct.

4 Q. Then a rope attached to the end?

5 A. Yes.

6 Q. And AA, that's a close-up photo of that
7 same shank; true?

8 A. Correct.

9 Q. Show you another one, BB; the same shank?

10 A. Yes.

11 Q. And then I just want to show you DD. Is
12 this a close-up of the same shank?

13 A. I believe so.

14 Q. Can you tell me the significance of this
15 close-up picture?

16 A. I'm not sure. I didn't take those
17 pictures.

18 Q. Does it appear like the tip or the point of
19 the shank is bluish, or has some sort of paint or
20 something on it?

21 A. Yes.

22 Q. Now, let's show you EE, which is pictures
23 of the shower inside of the blue pod on the second
24 level; correct?

25 A. Yes.

1 Q. And there is a marking in there, a yellow
2 number 3. That's a crime scene number for you to
3 document where things were found; correct?

4 A. Right.

5 Q. And this is the upstairs shower, where the
6 shank that Mario Rodriguez was believed to have put
7 in the drain was found?

8 A. Yes.

9 Q. The shank that Jerry Montoya allegedly
10 used?

11 A. Correct.

12 Q. And EE has got the same crime scene number
13 3, with a close-up picture of the shank; true?

14 A. Yes.

15 Q. And it looks like maybe some of the
16 drainpipe area of the shower?

17 A. Yes.

18 Q. Y'all actually had to take some of the
19 pipes out to get to the shank?

20 A. Yes, sir.

21 Q. These three shanks -- let me show you
22 Defendant's S -- are pictured -- well, excuse me, two
23 of the shanks are pictured here, are they not?

24 A. Yes.

25 Q. And so the top picture, if you're looking

1 at Defendant's S, is the shank seen from -- recovered
2 from the shower?

3 A. Correct.

4 Q. And the bottom is the shank recovered from
5 the trashcan?

6 A. Yes.

7 Q. The middle is just a piece of metal that
8 was also recovered from the same trashcan; was it
9 not?

10 A. Yes.

11 Q. Now, do you know if this middle piece, that
12 was also recovered from the trashcan, do you know
13 where that came from?

14 A. That came from the trashcan, first level.

15 Q. Do you know the source, how it ended up in
16 the trashcan where it came from?

17 A. No, sir.

18 Q. What about either of the other two?

19 A. Well, they were -- the bottom one was
20 thrown in the trashcan. The top one was taken to the
21 shower by Jerry.

22 Q. Mario Rodriguez. To the shower?

23 A. Correct.

24 Q. Okay. But my question for you is: Do you
25 know where this metal came from?

1 A. No, sir.

2 Q. These shanks, these pieces of metal and the
3 shanks, were discovered on late night, March the 7th,
4 maybe early morning March the 8th, by you and your
5 investigative team?

6 A. Correct.

7 Q. And V is just one more picture of the same
8 three pieces of metal on the bottom, right?

9 A. Yes.

10 Q. And you can see on the left-hand side the
11 State Police evidence boxes that they were packaged
12 in?

13 A. Yes.

14 Q. Okay. One more close-up of this is
15 Defendant's W. The same three pieces of metal we
16 were just discussing.

17 A. Yes.

18 Q. And then here is X; it's a close-up of that
19 other piece of metal that was found in the trashcan?

20 A. Correct.

21 Q. You didn't think this piece of metal was
22 actually used as a shank, did you?

23 A. No, sir.

24 Q. When this piece of metal was discovered,
25 did you have an idea what you thought it was, or why

1 you guys took it as evidence?

2 A. It's a metal. It shouldn't be there. It
3 was the same material as the other shanks; that's why
4 it was taken into evidence.

5 Q. So was it the same material as -- let me
6 show you N -- or, excuse me, W -- this shank here on
7 the bottom?

8 A. At the time I observed the shrank, I didn't
9 see it as a close-up. To me, it looks the same.

10 Q. Okay. I mean, it appears the same. I'm
11 not asking if it is the same.

12 A. Yes, sir.

13 Q. But this top piece of metal from the shower
14 drain, that's a little different than the other two,
15 isn't it?

16 A. The shape, yes, sir.

17 Q. I'm sorry?

18 A. It's a shape, different shape.

19 Q. It looks a little older, maybe rusted?

20 A. I'm not sure.

21 Q. Okay. In the course of your investigation,
22 did you learn about the wheelchair program at
23 Southern?

24 A. Yes, I did.

25 Q. And you learned that individuals in blue

1 pod were working in the wheelchair program at
2 Southern, did you not?

3 A. I did.

4 Q. And you learned that those individuals
5 would often bring metal from the wheelchair program
6 into the blue pod; correct?

7 A. That they would bring metals into the blue
8 pod?

9 Q. Pieces of metal from the wheelchair
10 program.

11 A. That was my understanding at the time.

12 Q. At the time of this investigation?

13 A. Correct.

14 Q. Within a week of this investigation, you
15 learned about this information; correct?

16 A. When I arrived on scene, that's when I
17 learned that the inmates were working at the
18 wheelchair program.

19 Q. And were taking metal from the wheelchair
20 program into the blue pod, right?

21 A. That was my understanding, yes.

22 Q. And, at least, you had information to that
23 effect?

24 A. Correct.

25 Q. And making shanks out of it?

1 A. Correct.

2 Q. And you knew that in the wheelchair
3 program, that inmates that worked there would take
4 wheelchairs and rehabilitate them, fix them up, give
5 them to nonprofits, or things like that, right?

6 A. I believe so, yes.

7 Q. And they also did that with walkers?

8 A. I only heard wheelchair. I didn't hear
9 anything else.

10 Q. You never heard about a walker?

11 A. No.

12 MR. VILLA: May have a moment, Your Honor?

13 THE COURT: You may.

14 MR. VILLA: Pass the witness.

15 THE COURT: All right. Thank you, Mr.

16 Villa.

17 Any other defendant want to ask any
18 questions of Mr. Palomares?

19 All right. Ms. Armijo, if you have
20 cross-examination of Mr. Palomares.

21 CROSS-EXAMINATION

22 BY MS. ARMIJO:

23 Q. Sergeant Palomares, was your initial
24 understanding, after responding on March 7, and that
25 initial investigation leading to the early morning

1 hours of the 8th, was that it was potentially a
2 wheelchair involved, as far as a source for the
3 shanks?

4 A. Yes.

5 Q. Now, at any point in time, prior to your
6 leaving Southern for the first part of the
7 investigation, did you have any idea that, instead of
8 a wheelchair as a source, that it could have been a
9 walker?

10 A. No.

11 Q. Now, I believe you indicated that, as part
12 of your investigation -- let me ask you this way: As
13 part of your investigation, did you, or members of
14 your team attempt to interview the inmates of blue
15 pod?

16 A. We did.

17 Q. And is it fair to say that the majority of
18 those people were not forthcoming with information?

19 A. Correct.

20 MR. VILLA: Objection, Your Honor.

21 THE COURT: I'm sorry?

22 MR. VILLA: I think it's leading and
23 argumentative.

24 THE COURT: Don't lead. Don't lead. But,
25 otherwise, the question is proper.

1 MS. ARMIJO: So you're not going to allow
2 me to cross-examine him.

3 THE COURT: You can cross-examine him. I'm
4 not saying it's argumentative. But don't lead.

5 BY MS. ARMIJO:

6 Q. Now, as far as witnesses, was Mr. Perez
7 part of that?

8 A. Yes, he was.

9 Q. And what did he initially tell you or
10 members of the state police team when he was
11 interviewed?

12 A. He told me that he didn't see anything. I
13 believe he said he was in his room, holding cell. He
14 didn't see anything.

15 Q. Did he provide you any further information
16 at that time?

17 A. No.

18 Q. And at the time that he came to the
19 interview, what did he use, if anything, to assist
20 him with his walking?

21 A. He had a walker.

22 Q. At that point in time -- is that point in
23 time included in the information, in the period of
24 the first time that you were investigating that case?

25 A. Yes.

1 Q. Going to your return to Southern. What
2 date was that again?

3 A. March 10th, 2014.

4 Q. Wait, I'm sorry, let me go back to that
5 first time. Were you in charge of the portion of the
6 investigation that dealt with evidence collection?

7 A. No.

8 Q. Is there a special team that deals with
9 evidence collection?

10 A. We have a Crime Scene Team. They are in
11 charge of collecting evidence.

12 Q. And who was in charge of collecting
13 evidence?

14 A. I believe it was Agent Norman Rhodes.

15 Q. So now, then, going to March 10th, at that
16 point, did you conduct additional investigations?

17 A. I did.

18 Q. And as part of those additional
19 investigations, did you interview Mr. Perez?

20 A. Yes, I did.

21 Q. And, at that point in time, what did you
22 learn as you recall -- well, let me back up. Did you
23 have an opportunity to actually listen to your
24 recorded interview?

25 A. I did.

1 Q. And what did he indicate to you as far as
2 his walker at that point in time?

3 A. He indicated a part of his walker was
4 missing. And he said, "They took it away from me."
5 So I understood that he was referring to correctional
6 officers.

7 Q. And did he indicate to you at what point in
8 time it came up missing?

9 A. He indicated a part of his walker was
10 missing.

11 Q. And I'm going to show you Defendants'
12 Exhibit --

13 MS. ARMIJO: Mr. Villa, do you have the
14 transcript?

15 MR. VILLA: Oh, I believe I --

16 Q. I'm going to refer to Exhibit RP-LL,
17 specifically, which, just so that you're familiar
18 with -- now, have you had an opportunity to review
19 this to see if it's accurate?

20 A. No.

21 Q. I'm going to page 26 of this. And in
22 looking there, do you see around line 12, he talks
23 about when the piece came up missing. Does that
24 refresh your recollection?

25 A. Yes.

1 Q. And what did he indicate?

2 A. He advised me that he was in the shower
3 when his piece of evidence -- the walker was missing.

4 Q. All right. And what does he go on to tell
5 you about the walker?

6 A. He tells me that a piece was missing, and
7 they took it away from him. And he advised that he
8 was going to handle it on his own.

9 Q. At any point in time did he tell you that
10 he thought that weapons could have been made with it?

11 A. No.

12 Q. Now, as you were doing that interview, what
13 was your understanding of where possible shanks could
14 have come from?

15 A. From the wheelchair program.

16 Q. And at that point in time, when he was
17 talking about the walker, given what he told you, did
18 you at that time associate the walker with being used
19 with shanks?

20 A. No, I didn't.

21 Q. Now, on March 10th, did you have -- I
22 believe you testified previously that somewhere
23 around that date that you had information that -- an
24 idea that it had been authorized prior to that date
25 by people other than the ones that committed the

1 actual stabbing; is that correct?

2 A. Correct.

3 Q. Now, did you have any idea at that time
4 that there was actual, what we would refer to as
5 paperwork, that came down from Santa Fe?

6 A. Not at that time.

7 Q. And specifically, I'm talking about March
8 of 2014. Were you aware of any paperwork coming down
9 from Santa Fe?

10 A. No.

11 Q. At some later point in time, did you become
12 aware of paperwork possibly coming down from -- and
13 when I say "Santa Fe, I guess I'm referring to the
14 penitentiary up there?

15 A. Correct.

16 Q. And why don't you tell us about that.

17 A. I learned on the paperwork, a few months
18 later after the investigation. I can't remember the
19 date. But it was when FBI started assisting with the
20 investigation.

21 Q. Okay. So -- but you indicated that it was
22 a few months later?

23 A. Correct.

24 Q. And when you say FBI, would that have been
25 Special Agent Lance Roundy?

1 A. Correct.

2 Q. Now -- and that was the first time that you
3 actually learned about some potential paperwork?

4 A. Yes.

5 Q. Now, as far as the walker, did anyone ever
6 tell you -- prior to this case being dismissed by the
7 State of New Mexico for federal prosecution, had you
8 been provided with any information about a walker
9 being part of the -- as a potential source for
10 shanks?

11 A. I don't think so. I think a question -- I
12 was asked a question about the walker, but I didn't
13 know at the time that the walker was used as part of
14 the incident.

15 Q. Okay. And when was that -- this happened
16 in -- just so that we can get a timeframe -- if this
17 incident occurred March 7 of 2014 -- well, let me ask
18 some other questions of you first. Were charges
19 initially brought by the State of New Mexico?

20 A. What charges?

21 Q. Were charges initially brought out of this
22 incident by the State of New Mexico?

23 A. Yes.

24 Q. And did that prosecution continue to some
25 point in time?

1 A. It was dismissed at some point.

2 Q. Okay. Do you recall the reason for the
3 dismissal?

4 A. Because the federal government was going to
5 charge at the federal level.

6 THE COURT: Ms. Armijo, is this a good
7 place for us to maybe take our lunch break?

8 MS. ARMIJO: Absolutely, Your Honor.

9 THE COURT: All right. We'll be in recess
10 for about an hour. Let's try to get back here. I
11 brought food in so that I will not leave the
12 building. And I'm not saying y'all do the same
13 thing. But we're going to be ready to go pretty
14 quick. We've done pretty well this morning getting
15 people in and out. Let's keep it up. All right.
16 Have a good lunch.

17 (The Court stood in recess.)

18 THE COURT: All right. Let's take a head
19 count here. I think we've got everybody, a lawyer
20 for everybody. Take a look around the room, help
21 your friends out. All right.

22 Looks like, Mr. Mondragon, you've entered
23 an appearance this afternoon. Good to see you.

24 MR. MONDRAGON: Yes, Your Honor.

25 THE COURT: All right. Anything, Mr.

1 Villa, y'all need to discuss with me, or are you
2 ready to go?

3 MR. VILLA: I think we're okay, judge.

4 THE COURT: All right. Ms. Armijo, if you
5 wish to continue your cross-examination of Mr.
6 Palomares.

7 Mr. Palomares, I'll remind you you're still
8 under oath.

9 THE WITNESS: Okay.

10 THE COURT: Ms. Armijo.

11 BY MS. ARMIJO:

12 Q. Sergeant Palomares, at some point during
13 your investigation, did you realize that there was an
14 allegation that actual paperwork came down, possibly
15 from Santa Fe, in reference to the Javier Molina
16 murder?

17 A. Yes, I did.

18 Q. And do you have an idea approximately when
19 that was during this investigation?

20 A. It had to have been maybe May or June of
21 2015, roughly.

22 Q. Okay. So May or June, 2015. And were you
23 ever in possession of that paperwork?

24 A. No.

25 Q. And when I say "you, I should also include

1 State Police?

2 A. Correct, no.

3 Q. Are you aware of any law enforcement entity
4 that was in possession of that paperwork?

5 A. No. Because I was the case agent.

6 MS. ARMIJO: Thank you. No further
7 questions.

8 THE COURT: Thank you, Ms. Armijo.

9 Any other defendant have any questioning?
10 Mr. Villa, do you have redirect?

11 MR. VILLA: Yes, Your Honor.

12 THE COURT: Of Mr. Palomares. Mr. Villa.

13 REDIRECT EXAMINATION

14 BY MR. VILLA:

15 Q. Good afternoon, Agent Palomares -- or
16 excuse me, Sergeant Palomares.

17 A. That's okay.

18 Q. So you were the case agent for this case?

19 A. Yes, sir.

20 Q. As the case agent, you're responsible for
21 directing the investigation of the homicide itself?

22 A. Correct.

23 Q. And I understand that you had individuals
24 helping you with the state police, who were
25 documenting evidence, taking photographs, things like

1 that, right?

2 A. Yes.

3 Q. You had individuals from New Mexico
4 Department of Corrections that were also assisting
5 you, showing you video, and those sorts of things;
6 correct?

7 A. Yes.

8 Q. And they had identified this plot, if you
9 will, to put a hit on Javier Molina, and they told
10 you about it, right?

11 A. Yes.

12 Q. You said that you were not aware of
13 paperwork until sometime in May or June of 2015?

14 A. Yes, sir, roughly.

15 Q. How did you become aware of that?

16 A. That's when I attended a meeting with the
17 FBI personnel at the AUSA Office here in Las Cruces.

18 Q. The FBI told you about it?

19 A. Correct. I think it was FBI or DEA -- USA
20 personnel.

21 Q. There were FBI agents assisting in this
22 investigation from the beginning; true?

23 A. Yes.

24 Q. Agent Lance Roundy conducted some
25 interviews in that first few days after the homicide?

1 A. Correct.

2 Q. So you were also working with them as part
3 of this investigation?

4 A. Yes.

5 Q. And as the case agent, you're responsible
6 for essentially the entire case, right?

7 A. Correct.

8 Q. Including all the evidence that's
9 collected?

10 A. Yes.

11 Q. All the evidence that's seized?

12 A. Yes.

13 Q. And all facets of the investigation,
14 knowing who has done what, and what needs to be done;
15 that sort of thing?

16 A. Oh, basically, the way it works, we have
17 the Crime Scene Team. It is -- there are state
18 police agents, and they are the ones in charge of
19 collecting any type of evidence. At that time, once
20 evidence is collected, then they release evidence to
21 me.

22 Q. And so you're aware of the evidence that's
23 been collected?

24 A. Correct.

25 Q. So if there was other evidence that needed

1 to be seized or collected or followed up on, that
2 would be your job?

3 A. Yes.

4 Q. And your Crime Scene Team from the state
5 police was there collecting a lot of this evidence,
6 right?

7 A. Yes.

8 Q. But the NMCD personnel, STIU, they were
9 collecting evidence, too, weren't they?

10 A. Well, depends.

11 Q. Some evidence, right? They got the video?

12 A. Right, yes.

13 Q. And then they got you some other
14 information, like about how -- this plot on Javier
15 Molina; correct?

16 A. Yes.

17 Q. And they were trying to gather intelligence
18 for you?

19 A. Yes.

20 Q. Now, you talked a little bit about with Ms.
21 Armijo the wheelchair program. Who informed you
22 about the wheelchair program?

23 A. I was notified -- when I first arrived on
24 scene, I was notified by STIU.

25 Q. What were you notified?

1 A. The inmates had a wheelchair program; that
2 they were allowed to work during work hours.

3 Q. And STIU notified you of that because they
4 thought it might be important to your investigation?

5 A. Correct.

6 Q. Did you learn about the facts, that metal
7 or shanks were coming into blue pod from the
8 wheelchair program from STIU?

9 A. Yes, that was my understanding initially,
10 that the shanks came from the wheelchair program.

11 Q. And can you tell me who with STIU gave you
12 this information?

13 A. I don't recall, sir. There was too many
14 STIU officers at the time.

15 Q. Did you go over to the wheelchair program
16 and investigate it?

17 A. No, I didn't.

18 Q. Have you been there at any point in time
19 during this investigation?

20 A. No.

21 Q. Did you interview anybody from the
22 wheelchair program, like a CO, or somebody that would
23 be supervising over there?

24 A. No.

25 Q. And these case agents who took the

1 evidence -- including the shanks that we saw this
2 morning -- you're supervising them; correct?

3 A. Correct. But there is a supervisor
4 assigned to impact team -- I'm sorry, Crime Scene
5 Team. He's the one in charge of collecting any type
6 of evidence. But at the same time, yes, I'm making
7 sure all the evidence that we need to obtain at the
8 time of the incident, it's collected.

9 Q. You were aware at the time of the discovery
10 of the shanks in the trashcan?

11 A. Yes.

12 Q. And the shower drain?

13 A. Yes.

14 Q. You saw the shanks yourself?

15 A. Yes.

16 Q. And these shanks appear to be -- I mean,
17 perhaps, they're broken or bent a little bit, but
18 solid pieces of metal, right?

19 A. Correct.

20 Q. That may have come from some other source,
21 such as the wheelchair program?

22 A. Correct.

23 Q. And you knew that information in the first
24 two days of your investigation: March 7, March 8?

25 A. Yes, sir.

1 Q. So, on March 7 -- you testified about this
2 with Ms. Armijo -- you interviewed Mr. Perez. He
3 told you he didn't see anything, right?

4 A. Correct.

5 Q. And Mr. Perez had a walker that day?

6 A. Yes, he did.

7 Q. And on March the 10th, you went back and
8 you interviewed Mr. Perez again. And he didn't have
9 a walker that time?

10 A. Correct.

11 Q. The walker that he had the first time
12 looked normal to you?

13 A. I didn't pay attention to it. I was more
14 concentrated on conducting an interview.

15 Q. But you knew that the walker was made of
16 metal?

17 A. Yes, I mean some -- yes, it was metal. I
18 didn't look at it. Like I said, I was more
19 concentrated on conducting the interview.

20 Q. It wasn't the type of walker -- I guess
21 I've seen a few walkers -- maybe more than I care to
22 since this case -- but some of them are a little less
23 solid and plastic, and others have wheels, are a
24 little more solid and metal; true?

25 A. Correct.

1 Q. And Mr. Perez' was the type that was a
2 little more solid and metal?

3 A. I can't recall. I think the walker had
4 wheels. But other than that, I don't recall paying
5 attention to the walker.

6 Q. And when you interviewed Mr. Perez -- I
7 just want to make sure that this is clear -- he told
8 you that, "they," being somebody from the Department
9 of Corrections, said a piece was missing from his
10 walker, right?

11 A. Yes, sir.

12 Q. He did not tell you himself: A piece was
13 missing from my walker, right?

14 A. He said a piece was missing from his
15 walker, and they took it away.

16 Q. No, I understand that. But he said, in
17 terms of they told him, when they took it away that a
18 piece was missing from his walker, right?

19 A. I'm not sure. I don't recall.

20 Q. Well -- and he said that it must have come
21 up missing in the shower?

22 A. Correct. He said he was in the shower.

23 Q. And I just want to make sure that we're
24 clear. When you had this conversation with him, you
25 did tell him -- or you asked him about, you know, did

1 orders come down from Santa Fe, in terms of orders to
2 hit Molina?

3 A. Yes.

4 Q. And he didn't say -- he said he didn't know
5 about that, right?

6 A. Correct.

7 Q. When you learned about these orders, did
8 you have some idea how the orders came down from
9 Santa Fe?

10 A. No. I never worked the case. I was more
11 concentrated on investigating the homicide.

12 Q. I mean, if somebody had ordered Javier
13 Molina to be hit from Santa Fe, they would be part of
14 this homicide investigation, wouldn't they?

15 A. Yes, sir. But I was never told by any
16 witnesses that the orders came from Santa Fe.

17 Q. You learned that from STIU?

18 A. Yes, sir.

19 Q. And STIU learned that from doing interviews
20 of inmates; correct?

21 A. Yes, sir.

22 Q. Did you ask about -- STIU about those
23 interviews that they had done?

24 A. We spoke briefly about the interviews. And
25 that's what I gather, somehow the orders came from

1 Santa Fe.

2 Q. Did you make any attempt to follow up on
3 that investigation and try determine if to orders had
4 come from Santa Fe?

5 A. Well, when we asked Mr. Perez, we asked if
6 orders came from Santa Fe, and he said he didn't know
7 anything about it.

8 Q. Independent of Mr. Perez, did you --

9 A. No, sir.

10 Q. Let me make sure I get the whole question
11 out. Did you do any other investigation to try to
12 determine whether that was true?

13 A. No, sir.

14 Q. Did you try to figure out how, if orders
15 came down, how they came down?

16 A. No, sir.

17 Q. And I want to make sure that I understand
18 completely. You did not go back and actually try to
19 view footage from prior days, or other than the
20 footage of the assault, you didn't try to view any
21 other footage?

22 A. No.

23 MR. VILLA: May I have a moment, Your
24 Honor?

25 THE COURT: You may.

1 MR. VILLA: That's all the questions I
2 have.

3 THE COURT: Thank you, Mr. Villa.

4 All right. Mr. Palomares, you may step
5 down. Is there any reason that Mr. Palomares cannot
6 be excused from the proceedings?

7 MS. ARMIJO: Your Honor, we have asked him
8 to wait around.

9 THE COURT: Okay. All right. You need to
10 stay under charge then.

11 All right. Ms. Fox-Young, does Mr. Perez
12 have his next witness or evidence?

13 MS. FOX-YOUNG: Yes, Your Honor. Mr. Perez
14 calls Daniel Bustamantes.

15 THE COURT: Mr. Bustamantes, if you'll come
16 up and stand next to the witness box on my right,
17 your left. Before you're seated, Ms. Standridge, my
18 courtroom deputy will swear you in.

19 DANIEL BUSTAMANTES,
20 after having been first duly sworn under oath,
21 was questioned and testified as follows:

22 DIRECT EXAMINATION

23 THE CLERK: Please be seated and state your
24 name for the record.

25 THE WITNESS: Daniel Bustamantes.

1 THE COURT: Mr. Bustamantes. Ms.
2 Fox-Young.

3 BY MS. FOX-YOUNG:

4 Q. Good afternoon, sir.

5 Can you tell me where you're currently
6 employed?

7 A. I'm employed with the Las Cruces School
8 Districts.

9 Q. Okay. And how long have you been employed
10 there?

11 A. Approximately three years.

12 Q. And where you were employed on March 7 of
13 2014?

14 A. Southern New Mexico Correctional Facility,
15 State of New Mexico, Department of Corrections.

16 Q. And what was your position there?

17 A. I was a sergeant for STIU.

18 Q. When did you start in that job, if you can
19 recall?

20 A. Maybe a year before.

21 Q. So maybe spring of 2013?

22 A. Maybe.

23 Q. Okay. And do you have a recollection of
24 the events on March 7, 2014, involving the death of
25 Javier Molina?

1 A. No, I don't. I can't remember.

2 Q. You don't remember anything about that?

3 A. I remember I took pictures at the hospital.

4 Q. Okay. And I'll get to that.

5 But you remember Javier Molina dying?

6 A. Yes.

7 Q. And you remember that you had some role in
8 that investigation?

9 A. Yes.

10 Q. Do you recall, on March 7, 2014, when you
11 learned of the death?

12 A. No.

13 Q. Do you recall who gave you a role in that
14 investigation, who gave you a job to do?

15 A. No.

16 Q. Okay. Tell me what you do remember. You
17 remember going to the hospital, you said?

18 A. Yes.

19 Q. And you photographed Javier Molina?

20 A. Yes.

21 Q. And did you conduct any interviews that you
22 recall?

23 A. I can't remember.

24 Q. Do you remember photographing anything else
25 in the course of the investigation?

1 A. No.

2 Q. Mr. Bustamantes, when you -- if you recall,
3 when you took photographs in the course of this
4 investigation, or any investigation, did your name
5 get applied to the photograph? Was there a marker on
6 the photograph that showed that you took it?

7 A. Yes.

8 Q. And was that always true when you did STIU
9 investigations?

10 A. Yes.

11 Q. Do you remember anybody else who you worked
12 with on this case?

13 A. Particularly, or just in general?

14 Q. Do you remember any other officers who
15 worked on it with you?

16 A. STIU; the members themselves.

17 Q. How many STIU officers were located at
18 Southern at that time?

19 A. I can't remember exactly the number. I
20 mean, four or five.

21 Q. And do you remember an Ernest Holguin?

22 A. Yes.

23 Q. Was he an STIU officer at Southern in March
24 of 2014?

25 A. Yes.

1 Q. Did he work with you during the course of
2 this investigation?

3 A. Yes.

4 Q. Do you remember Adam Vigil being present?

5 A. No.

6 Q. Do you remember anybody coming from Santa
7 Fe during the course of the investigation, with STIU?

8 A. No.

9 Q. Do you recall seeing a walker during the
10 course of your investigation?

11 A. No.

12 Q. And you didn't photograph a walker?

13 A. No.

14 Q. And as far as you know, you didn't do
15 anything else related to the Javier Molina
16 investigation?

17 A. All I did was -- all I remember is taking
18 pictures of Javier Molina at the hospital.

19 Q. After you took the pictures, do you know
20 what you did with them?

21 A. I can't recall who I turned them in to.

22 Q. Do you recall if it was state police you
23 turned them in to?

24 A. For sure, no, I don't remember.

25 Q. Do you remember if Agent Palomares was

1 present for any of your work on the investigation?

2 A. Yes.

3 Q. Was he present for briefings with you?

4 A. I can't remember.

5 Q. Was he at the hospital?

6 A. No.

7 Q. So you just remember him being present at
8 the jail?

9 A. At the facility?

10 Q. At the prison.

11 A. Yes.

12 MS. FOX-YOUNG: Your Honor, I'll pass the
13 witness.

14 THE COURT: Thank you, Ms. Fox-Young.

15 Any other defendant want to ask any
16 questions of Mr. Bustamantes?

17 All right. Mr. Castellano.

18 MR. CASTELLANO: There is no cross, Your
19 Honor.

20 THE COURT: No cross. All right, Mr.
21 Bustamantes, you may step down.

22 Is there any reason that Mr. Bustamantes
23 cannot be excused from the proceedings,
24 Ms. Fox-Young?

25 MS. FOX-YOUNG: No, Your Honor.

1 THE COURT: Mr. Castellano?

2 MR. CASTELLANO: No, Your Honor.

3 THE COURT: All right. You are accused
4 from the proceedings. Thank you for your testimony.

5 Anybody else need him for anything?

6 All right. Ms. Fox-Young, does Mr. Perez
7 have his next witness or evidence?

8 MS. FOX-YOUNG: Yes, Your Honor. Mr. Perez
9 will call Ernest Holguin.

10 THE COURT: Mr. Holguin, if you'll come up
11 to the witness box on my right, your left. Before
12 you are seated, Ms. Standridge, my courtroom deputy,
13 will swear you in.

14 ERNIE HOLGUIN,
15 after having been first duly sworn under oath,
16 was questioned and testified as follows:

17 DIRECT EXAMINATION

18 THE CLERK: Please be seated and state your
19 name for the record.

20 THE WITNESS: My name is Ernie Holguin.

21 THE COURT: Mr. Holguin. Ms. Fox-Young.

22 BY MS. FOX-YOUNG:

23 Q. Good afternoon, Mr. Holguin. I see you're
24 wearing an STIU shirt. Are you currently employed by
25 STIU of the Department of Corrections?

1 A. Yes, ma'am, I am.

2 Q. And where are you located? Where do you
3 work for them?

4 A. I work here at Southern, in Las Cruces, New
5 Mexico.

6 Q. Sir, how long have you worked there in this
7 capacity?

8 A. In this capacity, 10 years; total 16.

9 Q. I'm sorry a, total of 16?

10 A. In corrections; but 10 within the STIU.

11 Q. And the whole time you were at Southern?

12 A. Yes, ma'am.

13 Q. Were you at any time -- well, could you
14 tell me what your first assignment was at Southern,
15 ten years ago?

16 A. I was Correctional Officer 1.

17 Q. And how long did that last?

18 A. For five years. And then I promoted to
19 K-9, and gang unit.

20 Q. Were you at any time, working as a
21 correctional officer, in a pod with alleged or
22 validated SNM members?

23 A. Yes, ma'am.

24 Q. And which pod was that?

25 A. At the time, it was 1 units.

1 Q. Could you repeat that?

2 A. In the 1's.

3 Q. The 1's?

4 A. One units, yes, ma'am.

5 Q. Is that 1 A and 1 B?

6 A. 1 A.

7 Q. And what period of time were you there?

8 A. As a correctional officer, I believe, like
9 two years. And STIU, through my whole career we've
10 been in and out of there. We don't work the floor
11 every day.

12 Q. So you stopped working the floor in about
13 2006?

14 A. 2007.

15 Q. And then you said you moved to the gang
16 unit and K-9?

17 A. Yes, ma'am.

18 Q. And what do your job duties entail?

19 A. Primarily K-9 searches, and monitoring
20 gangs within the prison.

21 Q. And in the course of your job duties, do
22 you interview inmates?

23 A. Yes, ma'am, I do.

24 Q. And informants?

25 A. Yes, ma'am.

1 Q. Continuing to this day; correct?

2 A. Yes, ma'am.

3 Q. Do you recall where you were on March 7,
4 2014, which is when Javier Molina was killed?

5 A. I believe I was off shift, and was called
6 back in to our facility.

7 Q. You think you were called in that night?

8 A. Yes, ma'am.

9 Q. Do you remember who called you?

10 A. It would have been our coordinator,
11 Mr. Blanco.

12 Q. Could you tell me Mr. Blanco's full name?

13 A. Daniel Blanco.

14 Q. And is Daniel Blanco employed at Southern
15 New Mexico Correctional Facility?

16 A. Yes, ma'am.

17 Q. And he's STIU?

18 A. Coordinator, yes, ma'am.

19 Q. He's a captain?

20 A. He's a coordinator; he's a little bit above
21 the captain.

22 Q. I see. And was he a coordinator at that
23 time?

24 A. Yes, ma'am.

25 Q. And so it's your recollection that

1 Coordinator Blanco called you in and -- called you on
2 your phone --

3 A. Yes, ma'am.

4 Q. -- and asked you to come in?

5 A. Yes, ma'am.

6 Q. Do you remember what happened when you
7 arrived?

8 A. There had been a stabbing at our facility,
9 so all of the gang unit was called in.

10 Q. And how many individuals comprised the gang
11 unit at that time?

12 A. At that time, I believe there was five of
13 us total, plus the coordinator.

14 Q. Do you remember who else -- so you were
15 one?

16 A. I'm one, yes.

17 Q. And there are four more?

18 A. Yes. It was officer -- K-9 Officer
19 Maldonado, Sergeant Ruben Archuleta, Officer Josh
20 Segala. And this was our total unit at the time.

21 Q. So four, plus the coordinator?

22 A. Yes, ma'am.

23 Q. And everybody arrived that night?

24 A. Yes, ma'am.

25 Q. And did Coordinator Blanco have you in for

1 a briefing when you arrived?

2 A. Yes, ma'am.

3 Q. At that time was State Police on scene?

4 A. No.

5 Q. So it was just you guys?

6 A. It was just us guys, yes.

7 Q. And did Captain Blanco give you all
8 directives at the time of that briefing?

9 A. Yes.

10 Q. What was your directive?

11 A. I was sent to assist Sergeant Bustamantes,
12 at the hospital for -- to take pictures, to assist in
13 taking pictures.

14 Q. So you traveled to the hospital right away
15 with Sergeant Bustamantes?

16 A. I went separately.

17 Q. And that was that night?

18 A. Yes, ma'am.

19 Q. And then did you return to the facility?

20 A. Later on that night, yes, ma'am.

21 Q. Did you meet again that night with the rest
22 of the gang team?

23 A. I don't believe so. I went to the back,
24 where I was sent to talk to Mr. Blanco.

25 Q. Are there -- we've heard some testimony

1 that there is something called -- I don't know what
2 it's called exactly, but a large room that STIU uses
3 that has computers at Southern?

4 A. Yes, ma'am.

5 Q. What do you call that?

6 A. It's just our office, just the STIU office.

7 Q. Are there individual offices contained in
8 that area?

9 A. Not in that area. I think you're probably
10 referring to the phone yard, and the units where
11 there are actually separate offices there.

12 Q. Who had offices in the phone yard at that
13 time?

14 A. I don't recall who the unit manager was,
15 but it's usually the unit manager and the two
16 caseworkers. I couldn't tell you who they were at
17 that time because they rotate.

18 Q. So they're not STIU officers, per se?

19 A. No.

20 Q. And do you recall what role -- I think you
21 said Officer Maldonado -- had?

22 A. Yes, he was with me when we conducted
23 interviews.

24 Q. And how about Sergeant Archuleta?

25 A. I don't recall where he was at. I'm sure

1 he was in the back somewhere.

2 Q. But he took his orders from Coordinator
3 Blanco?

4 A. Yes, ma'am.

5 Q. And did you say Officer Segura?

6 A. Segala.

7 Q. Segala. What was his role?

8 A. I don't know exactly what he was doing, but
9 he's one of the other gang officers that conducts
10 interviews.

11 Q. So when you returned from the hospital that
12 night, did you begin conducting interviews?

13 A. Yes, ma'am.

14 Q. Can you tell me who you interviewed?

15 A. I believe Timothy Martinez, Rudy Perez -- I
16 can't remember; he has three names -- but I ended up
17 doing five that night total.

18 Q. And all with Officer Maldonado?

19 A. Yes, ma'am.

20 Q. And did you watch any video that night?

21 A. No, I didn't, no.

22 Q. Did you ever watch any video of the
23 homicide?

24 A. Later on, after it was all -- we were done
25 with our stuff, yes, I did.

1 Q. Do you remember when?

2 A. That would probably have been the next day.

3 Q. Do you recall when State Police arrived on
4 scene?

5 A. I remember them showing up. I don't know
6 the exact time, or anything like that.

7 Q. Do you remember how many officers?

8 A. I believe there was two.

9 Q. Do you remember who came?

10 A. I believe Agent Palomares, and I can't
11 remember the other officer's name.

12 Q. So you conducted five interviews that
13 night. What did you do the next day?

14 A. I believe we just completed our paperwork,
15 and go and just review what we'd gone over basically.

16 Q. And you all met?

17 A. Yes, ma'am.

18 Q. And did you all -- did the whole gang unit
19 watch the video together at some point?

20 A. No, not that the whole unit, no. Just
21 individually one or two guys at a time would be
22 looking at it.

23 Q. Did you watch it by yourself?

24 A. No, I watched it with Officer Maldonado.

25 Q. Where were you when you watched it?

1 A. Within our office, in the main building.
2 We have a separate office from the offices in the
3 back. It's actually our office.

4 Q. So if you know, did somebody pull a tape
5 from the pod itself and retrieve it and take it into
6 the main office to be viewed? Do you know how that
7 works?

8 A. No, we actually can view it off of our
9 computers in our office.

10 Q. So from the STIU office you have access to
11 all of the video in the facility?

12 A. Yes.

13 Q. How long does that last, say -- and I'm
14 talking about March of 2014. If you wanted to look
15 back at video from two weeks prior, could you from
16 the STIU office?

17 A. Yes, we can look back two weeks.

18 Q. How far back could you look?

19 A. I couldn't tell you -- give the exact date
20 or time on that. I know we can go back to at least a
21 month.

22 Q. At least a month. Do you know how long
23 that video exists before -- well, do you know if the
24 video is kept permanently?

25 A. I wouldn't know. I would assume they make

1 a copy of it.

2 Q. I didn't ask a very clear question. If you
3 wanted to go today and -- well, let me move on.

4 So you think you could go back at least a
5 month at that time?

6 A. Yes.

7 Q. Have you ever been involved in -- for
8 purposes of this investigation, were you involved in
9 making a copy of that video?

10 A. No.

11 Q. Do you know who was?

12 A. No, I don't.

13 Q. So after you watched the video with Officer
14 Maldonado, what steps did you take? You said you did
15 some paperwork?

16 A. Yes. We were just referencing to the video
17 from the interviews that we conducted.

18 Q. You were watching the video and comparing
19 it to what you had learned in the interviews?

20 A. Correct.

21 Q. Can you tell me specifically what you were
22 looking for?

23 A. We were just trying to make sure we had the
24 correct inmates that were involved.

25 Q. Okay. And so you confirmed that Timothy

1 Martinez was pictured?

2 A. Yes, ma'am.

3 Q. And that Jerry Montoya was pictured?

4 A. Yes, ma'am.

5 Q. And that Jerry Armenta was pictured?

6 A. Yes, ma'am.

7 Q. And Mario Rodriguez.

8 Did you do anything else in the course of
9 your investigation, vis-a-vis the video?

10 A. No.

11 Q. And do you know when -- you said you
12 could -- did you actually pull it through the
13 computer system, or did somebody else pull it up for
14 you to see?

15 A. I believe somebody else pulled it up.

16 Q. Do you know?

17 A. It might have been Officer Maldonado.

18 Q. Do you remember when you started watching
19 it, at what point in the video?

20 A. I think we just went off the times that
21 were given to us, and we started at that particular
22 time and we just watched it from there.

23 Q. Who gave you that time?

24 A. Through the interviews.

25 Q. So the inmates gave you times?

1 A. Correct.

2 Q. And you watched from there. But you didn't
3 look prior to the times that the inmates gave you?

4 A. "Prior"? What do you mean by --

5 Q. You didn't look to see any video from
6 earlier that afternoon?

7 A. Yeah, I looked back just to check things.
8 But I mean, from the interviews, we actually used
9 those times and started from there to get right to
10 where it actually started.

11 Q. To corroborate what you had heard?

12 A. Yes.

13 Q. But you think you looked back earlier in
14 the video?

15 A. Right. Yeah, we may have gone -- instead
16 of, you know, at 13 minutes, we may have gone back to
17 like, 11, just to make sure we covered everything to
18 that point.

19 Q. Okay. And I'm not asking you to speculate,
20 and I know it's been a little while, but do you
21 remember looking back before the time stamp given to
22 you by those inmates?

23 A. Maybe minutes.

24 Q. Okay. Just to get ahead of it, so that you
25 could watch from that time?

1 A. That's right.

2 Q. Not hours?

3 A. That's right.

4 Q. When you -- what paperwork did you
5 complete?

6 A. Just all of our memos, completed the
7 interviews.

8 Q. And were those memos to Captain Daniel
9 Blanco?

10 A. Yes, ma'am.

11 Q. Did you do a separate memo for each
12 interview that you conducted?

13 A. Yes, ma'am.

14 Q. So there was a memo with regard to your
15 interview of Mr. Armenta?

16 A. Yes.

17 Q. And Mr. Montoya?

18 A. Yes.

19 Q. And Mr. Rodriguez?

20 A. Yes.

21 Q. And Mr. Martinez?

22 A. Yes.

23 Q. Do you remember any other memos that you
24 did?

25 A. I did one for Mr. Perez.

1 Q. And those were all within the day of the
2 murder?

3 A. Yes, ma'am.

4 Q. Do you remember talking to any other
5 inmates in the days following about the Molina case?

6 A. Not in the days following -- well, maybe
7 within a couple of weeks I talked to another inmate.

8 Q. Tell me about that.

9 A. It was basically the same type of
10 interview, just asking if he could -- you know, what
11 had happened that night, or what knowledge he had.

12 Q. Was that interview conducted in the phone
13 yard?

14 A. Yes, ma'am.

15 Q. Who was that of?

16 A. I can't remember his name. I have it,
17 though. Oh, I know, Inmate Gonzalez.

18 Q. That's Samuel Gonzalez?

19 A. Yes, ma'am.

20 Q. And what brought you to interview Samuel
21 Gonzalez?

22 A. I just felt that he'd be somebody we needed
23 to talk to. We were just doing interviews, random
24 interviews of other inmates.

25 Q. It was random?

1 A. Yes. I felt it was maybe somebody we
2 needed to talk to, so I talked to him -- or
3 interviewed him.

4 Q. If you remember, what made you think that
5 he was somebody you needed to talk to?

6 A. I just felt he was influential.

7 Q. Do you remember what he may have told you
8 of note or what he did tell you of note in that
9 interview related to this case?

10 A. Not at this time.

11 Q. Do you remember doing a memo to Captain
12 Blanco with regard to that interview?

13 A. Yes, ma'am.

14 MS. FOX-YOUNG: Your Honor, may I approach?

15 THE COURT: You may.

16 Q. Sir, without telling me what this document
17 is, do you remember it?

18 A. Yes, I do.

19 Q. And actually this document has been
20 admitted into evidence, and so I'll go ahead and
21 publish it. This is Defendant's Exhibit RP-B. And
22 you'll see on the first page it looks like this is
23 your enclosure memo, is it not, to Captain Blanco?

24 A. Yes, ma'am.

25 Q. And it's dated March 19, 2014?

1 A. Yes, ma'am.

2 Q. And so was this actually the day that you
3 interviewed Mr. Gonzalez?

4 A. Yes, ma'am.

5 Q. I know you said you don't recall exactly
6 what was said. Do you recall receiving a letter from
7 Mr. Gonzalez that you attached to the memo?

8 A. Yes.

9 Q. And you reviewed that for purposes of
10 crafting a memo?

11 A. Yes, ma'am.

12 Q. Do you recall Mr. Gonzalez, on the 14th of
13 March, telling you something about Javier being
14 killed because of what the papers these guys had in
15 their possession?

16 A. Yes, ma'am.

17 Q. And that was also in the written document
18 that he gave you?

19 A. Correct.

20 Q. Did he tell you anything else about that
21 paperwork?

22 A. Everything that was explained to me is
23 there in the memo. I couldn't tell you off the top
24 of my head.

25 Q. Okay. And do you recall Mr. Gonzalez

1 telling you that you should look at the cameras
2 because the cameras don't lie, and that some of what
3 he had told you would be shown on the cameras?

4 A. I don't remember that exactly. But I know
5 it was brought up.

6 Q. But you did review the document that he
7 gave you fully?

8 A. At that time, yes.

9 Q. It's not typed. It's a little hard to
10 read, but do you see the very last portion of this
11 memo on page 12976 --

12 A. Yes.

13 Q. -- from Mr. Gonzalez, where he says that
14 "Cameras don't lie, and what I said about some of
15 this will prove I'm right through cameras."

16 A. Yes, ma'am.

17 Q. Do you remember him telling you that now?

18 A. Yes.

19 Q. What, if anything, did you do after talking
20 to Mr. Gonzalez about the paperwork and the cameras?

21 A. That came back -- like I was telling you,
22 we went and reviewed everything, and made sure that
23 it matched up to what we already had.

24 Q. Okay. You reviewed that same segment
25 starting with the part that the inmates told you this

1 is where the assault began?

2 A. Correct.

3 Q. You didn't look at any footage from that
4 afternoon or the morning?

5 A. No.

6 Q. Do you know if anybody did?

7 A. I don't know.

8 Q. Do you remember from that camera footage --
9 do you remember where Rudy Perez was housed, what
10 cell he was in?

11 A. I don't remember the cell, but I know it
12 was on the bottom tier.

13 Q. Do you remember if you could see it when
14 you looked at the camera footage?

15 A. If we looked at the cameras, we probably
16 could see, but I don't recall.

17 Q. Specifically.

18 A. Specifically.

19 Q. Do you remember talking to anybody else
20 regarding the Molina murder in the days following?

21 A. Inmate-wise?

22 Q. Yes.

23 A. No.

24 Q. When you talked to Mr. Gonzalez about the
25 paperwork, and he told you that he thought that Mr.

1 Molina was killed because of papers?

2 A. Um-hum.

3 Q. And that's in his -- the written submission
4 he gave you.

5 A. Yes.

6 Q. You're somewhat familiar with SNM, right?

7 A. Yes, ma'am I, am.

8 Q. You've been working with SNM since --

9 A. Actually, since I started, since 2002.

10 Q. Okay. So can you tell me if SNM needs
11 paperwork to validate a hit?

12 A. Yes, they do.

13 Q. And so during the course of this
14 investigation, did you learn that paperwork was
15 actually transferred between pods?

16 A. We knew it was transferred between
17 facilities, and then once it got to our facility, it
18 was transferred through pods.

19 Q. From the yellow pod to the blue pod?

20 A. Correct.

21 Q. But you never were able to look at the
22 cameras to see if you could find that paperwork
23 transfer?

24 A. Right, it would be difficult to do that.

25 Q. But you didn't look for it, right?

1 A. I didn't look for it.

2 Q. Okay. And you don't know if anybody else
3 did?

4 A. No, ma'am, I don't.

5 Q. Going back to the interviews that you
6 conducted on the night of the 7th.

7 A. Yes, ma'am.

8 Q. I think you said there were five.

9 A. Yes.

10 Q. Did you learn anything that night about the
11 paperwork?

12 A. Yes, I believe so. I believe several, or
13 three of the inmates had brought it up.

14 Q. Do you remember who told you that?

15 A. Not off the top of my head, no.

16 Q. But you and Mr. Maldonado heard about the
17 paperwork on March 7?

18 A. Correct.

19 Q. And I know that you said you don't
20 specifically remember any other interviews. If I
21 told you that you did do an interview, or there is a
22 memo that's been produced to the defense from March
23 17, 2014, detailing an interview that you conducted
24 in the phone yard, with Art Maldonado present, does
25 that remind you -- do you remember who you might have

1 interviewed?

2 A. No, ma'am, I don't.

3 Q. I'm showing you here on the Elmo what's
4 been marked as Exhibit RP-A. It appears to be
5 another memo that you did to Captain -- Coordinator
6 Blanco.

7 A. Yes, ma'am.

8 Q. On the 17th. And you can take a minute to
9 take a look at it. I know this is only the first
10 page of it.

11 A. Right.

12 Q. It's two-and-a-half pages. And if you'd
13 like to look -- do you remember who this is?

14 A. Yes, I believe that's Inmate Gonzalez
15 again.

16 Q. Okay. How do you know that it's Inmate
17 Gonzalez?

18 A. Just from the first paragraph. I remember
19 that discussion.

20 Q. In any event, in the course of this
21 interview, which is 10 days after the murder, you
22 learned, did you not, that there were a number of
23 shanks in the SNM pod?

24 A. Correct.

25 Q. And I think this inmate tells you, in your

1 words, that he knows where there are shanks, and he
2 can give you one right then, but first he wanted his
3 property back?

4 A. Correct.

5 Q. And he told you about one that was in 7
6 blue pod --

7 A. Correct.

8 Q. -- in particular. And I think he went into
9 a great deal of detail about some history of the SNM
10 with you?

11 A. Correct.

12 Q. And then he -- showing you the second page
13 of this memo -- and if you look down the second to
14 last paragraph, the last full paragraph there -- I
15 think you reported to Captain Blanco that you asked
16 more about where the shanks were in the pod, right?

17 A. Correct.

18 Q. And do you remember what this individual
19 told you about the wheelchair program?

20 A. Yes.

21 Q. What did he tell you?

22 A. He explained to me that that's where one of
23 them had come from, one of the shanks.

24 Q. He said, "That's where all the shanks come
25 from"?

1 A. Yes.

2 Q. Did he give you any detail about what kinds
3 of things would come in from the wheelchair program?

4 A. I believe he just talked about metal,
5 basically metal, and how they would get around the
6 officer to bring it in.

7 Q. How did they get around the officer to
8 bring it in?

9 A. Allegedly, they would get patted down.
10 They would leave a jacket inside the work area, and
11 then request to go back and pick it up. And inside
12 that jacket would be the contraband.

13 Q. Did he tell you how long that had been
14 going on?

15 A. I don't recall how long.

16 Q. And he told you that Jason Wright is the
17 one that brought those in from the wheelchair
18 program, right?

19 A. Yes.

20 Q. And he also told you that it was his own
21 duty to know where all the shanks were; is that
22 right, and who had them?

23 A. Yes.

24 Q. Did he tell you where all the shanks were
25 in the pod?

1 A. Some were given out. I don't believe all
2 of them were, but some were given.

3 Q. And did you ask him where the shanks -- the
4 shank or shanks that were used in the Molina killing
5 came from? Do you remember?

6 A. I don't recall, no.

7 Q. This same individual also told you that --
8 something about Lupe Urquizo asking him what to do
9 with paperwork, did he not?

10 A. Yes. He asked if he could help him get rid
11 of it.

12 Q. He asked this person how he could get rid
13 of that paperwork?

14 A. Yes, ma'am.

15 Q. And he told you that if you or anybody
16 investigating this case were to look at the camera,
17 that you would actually see Mr. Urquizo get his
18 property, and then give an envelope to Carlos
19 Herrera; is that right?

20 A. Yes, ma'am.

21 Q. And having learned about these two sort of
22 major areas of inquiry from this individual, you
23 learned about metal coming from the wheelchair
24 program, you learned about the paperwork, did you go
25 back to the video at any point, and look to see if

1 you could see metal coming in, or if you could see a
2 paperwork transfer?

3 A. I didn't personally do that.

4 Q. Okay. How did you transmit this memo to
5 Captain Blanco?

6 A. I typed it out and handed it to him, gave
7 him copies of it.

8 Q. Do you know what happened to it after that?

9 A. I don't know.

10 Q. Did you ever talk to State Police about
11 these findings?

12 A. I believe they received the same memos that
13 Captain Blanco -- Coordinator Blanco received.

14 Q. Agent Palomares received the same memos?

15 A. Yes, ma'am.

16 Q. How do you know that?

17 A. I gave them to him.

18 Q. You gave them to Agent Palomares?

19 A. Yes.

20 Q. Did you give them to Agent Palomares the
21 same day that you wrote them?

22 A. No.

23 Q. Do you know when you gave them to him?

24 A. No, I don't remember. It was probably a
25 short time after that.

1 Q. But there is not a report documenting the
2 transfer of those memos; you just handed them to him?

3 A. I don't know.

4 Q. Do you recall how long the investigation of
5 the murder continued after -- obviously, it was still
6 going on on the 19th -- after the 19th, did you
7 continue to interview anybody else?

8 A. Not specifically for this particular
9 reason. But, you know, I did continue interviewing
10 inmates, but not for this particular thing.

11 Q. Okay. What, if anything, did you do upon
12 learning that metal was coming out of the wheelchair
13 program and being used to make shanks?

14 A. It was reported to Coordinator Blanco, then
15 he turns around and reports that information to the
16 Warden, and then they get together and make up a
17 plan, or whatever they're going to do.

18 Q. And it was reported to Palomares?

19 A. Yes.

20 Q. Did you ever go visit the wheelchair
21 program to investigate those claims?

22 A. Yes, I did.

23 Q. Tell me what you did there.

24 A. Me and Officer Maldonado, we just went down
25 to where the program is held, and we just did a

1 walk-through, and looked at their security procedures
2 for our own --

3 Q. What were those security procedures?

4 A. They described pretty much the same thing;
5 that they would put tools up, do an inventory, pat
6 down the inmates, and then release them from there
7 back to their unit.

8 Q. Did you have any reason to disbelieve Mr.
9 Gonzalez when he told you metal was coming out of
10 there?

11 A. No.

12 Q. You believed him?

13 A. I believed him.

14 Q. And do you know if anybody else did any
15 further -- made any further inquiries as to how metal
16 was coming out of the wheelchair program?

17 A. I don't.

18 Q. There are wheelchairs worked on in the
19 wheelchair program, right?

20 A. Right.

21 Q. Do you know if there were also walkers in
22 the wheelchair program?

23 A. I believe there was just various different
24 types of wheelchairs, walkers, wheelchairs, the
25 aluminum walkers that don't have wheels on them, that

1 sort of thing, a wide variety.

2 Q. Did you photograph it at that time?

3 A. I didn't, no.

4 Q. Do you know if anybody photographed the
5 wheelchair program at the time of your walk-through?

6 A. No, nobody did.

7 Q. Did you then make a report to Captain
8 Blanco about what you had learned at the wheelchair
9 program?

10 A. We verbally spoke to him and explained what
11 we had learned.

12 Q. Was it your belief then that these inmates
13 had obtained shanks from the wheelchair program?

14 A. I believed it was possible.

15 Q. So you believed that it was possible, but
16 you didn't know exactly where the shanks came from,
17 right?

18 A. We weren't for sure, but that was an avenue
19 we had to look at, and it was very possible.

20 Q. Did anybody else do anything to exhaust
21 that avenue, to further inquire as to the metal
22 coming out of that program?

23 A. I couldn't tell you on that.

24 Q. Okay. Were you present or involved in any
25 subsequent -- I think you said that the night of the

1 murder, you interviewed -- you talked to Rudy Perez?

2 A. Yes, Rudy -- five of the total, I believe.

3 The memos were submitted.

4 Q. Did you ever talk to Rudy Perez again?

5 A. I don't recall.

6 Q. Do you remember that Rudy Perez had a
7 walker?

8 A. Yes, we discussed it on one of the memos
9 that I turned in.

10 Q. One of your memos discussed Mr. Perez'
11 walker?

12 A. Yes, ma'am.

13 Q. That was a memo to Captain Blanco?

14 A. Yes, ma'am.

15 Q. What did it say about Mr. Perez' walker?

16 A. We were just discussing the color, what
17 type, if he did have one, if anything was missing off
18 it.

19 Q. What caused you to write that memo?

20 A. I think we were still looking at different
21 avenues on weapons. So we knew that was in the pod,
22 so we conducted an interview with Mr. Perez.

23 Q. Did you compose that memo before or after
24 talking to Mr. Gonzalez, if you remember?

25 A. I can't remember.

1 Q. Okay. Was it close in time to the murder?

2 A. Yes.

3 Q. And did you, yourself, examine Mr. Perez '
4 walker?

5 A. No.

6 Q. How did you know what color it was?

7 A. Through questioning through him, his
8 answers.

9 Q. You asked Mr. Perez what color the walker
10 was?

11 A. Yes, I did.

12 Q. And what else did you ask him?

13 A. You know, why he had it in his cell. He
14 explained to me that he needed it to walk, to get
15 around, basically.

16 Q. Was this on the night of the murder?

17 A. I don't remember if it was on the night of
18 the murder.

19 Q. Was this even close in time to the Molina
20 murder?

21 A. Yes.

22 Q. It was after?

23 A. It was after.

24 Q. And so you drafted a memo to Captain Blanco
25 that included the color of the walker?

1 A. Yes.

2 Q. And what other details?

3 A. Parts that were missing off it.

4 Q. What parts were missing?

5 A. Specifically, a rod that was held down with
6 two nuts.

7 Q. And how did you know that part was missing?

8 A. He advised me that it was missing.

9 Q. Mr. Perez told you that?

10 A. Yes, ma'am.

11 Q. But you don't know the date?

12 A. It would be on the memo.

13 Q. Have you seen the memo since you wrote it?

14 A. No.

15 Q. When you talked to Mr. Perez, he was
16 unwilling to tell you anything, make any statements
17 about the murder; is that right?

18 A. Correct.

19 Q. And so you recall composing this memo about
20 the walker, but it was totally based upon
21 information, secondhand information; you didn't
22 examine the walker?

23 A. Correct.

24 Q. Did you ever see the walker?

25 A. No, I didn't.

1 Q. And you also gave this memo to Agent
2 Palomares, like the others?

3 A. Yes, ma'am.

4 Q. And you handed it to him?

5 A. Yes.

6 Q. Do you remember composing any other memos
7 with regard to this investigation? I know there are
8 the two Gonzalez ones, and you said there were five
9 on the night of the murder, and there was one about
10 the walker. Any others?

11 A. I think that's all.

12 Q. Did you ever talk to Jason Wright?

13 A. I spoke to him, but I don't recall the date
14 or time.

15 Q. Did you try to talk to him about taking
16 metal out of the wheelchair program after you learned
17 that from Mr. Gonzalez?

18 A. Yeah, I believe so.

19 Q. Would you have done a memo if you did talk
20 to him?

21 A. Yes.

22 Q. But sitting here today, you just don't
23 remember?

24 A. I just don't, yeah.

25 Q. Do you know if Mr. Perez' walker was taken

1 from him?

2 A. He -- during the interview that I had with
3 him, he did say that the pod had been shaken down,
4 and he was questioned as to why his walker had been
5 taken. And I told him it had nothing to do with me;
6 that it had to do with the shakedown crew that had
7 conducted the shakedown.

8 Q. Do you know who took it?

9 A. No, I don't.

10 Q. Somebody in the shakedown crew?

11 A. From his statement I would assume.

12 Q. But you don't know from any other source?

13 A. I don't know.

14 Q. And you've never seen it?

15 A. No.

16 Q. And you've never examined it. Do you know
17 if anybody with STIU has seen it?

18 A. Not that I know of, no.

19 Q. Did you ever ask anybody where it was?

20 A. No, ma'am.

21 Q. But you talked about it as a potential
22 avenue to consider?

23 A. Correct.

24 Q. But never tried to locate it?

25 A. When Mr. Perez had advised me it had been

1 taken, I figured it had been taken for a reason. So
2 I no longer went to look for any of that stuff.

3 Q. But you were in the middle of conducting a
4 murder investigation, right?

5 A. Yes, ma'am.

6 Q. And trying to find the source of those
7 shanks?

8 A. Um-hum.

9 Q. But you never looked for the walker?

10 A. I never went looking for it, no, ma'am.

11 Q. Do you know when the shakedown -- if there
12 was any pattern to it -- when the shakedown crew
13 would shake down a pod at that time, where any
14 contraband would go?

15 A. Usually, they confiscate and take it to ID.

16 Q. ID?

17 A. Yes.

18 Q. What does that stand for?

19 A. Inmates' property, is what it is. And
20 that's where they put all their personal belongings,
21 things that they can't have, stuff like that, goes
22 through ID first.

23 Q. And according to policy, they give the
24 inmate a receipt?

25 A. Yes. And if that was confiscated, they

1 would have given him a confiscation slip.

2 Q. Did you ever see a confiscation slip for
3 the walker?

4 A. No, I didn't.

5 Q. Did you ask about one?

6 A. No, I didn't.

7 Q. Did you review anything that was shaken
8 down from those pods on the night of the murder?

9 A. No.

10 Q. Do you know if anybody in STIU looked at
11 any of that property?

12 A. No.

13 Q. You don't know?

14 A. I don't know if they did.

15 Q. Do you know if State Police did?

16 A. I don't.

17 Q. Did your memo on Mr. Perez' walker discuss
18 the fact that it was actually taken into -- that it
19 was actually seized as contraband by the shakedown
20 officers?

21 A. Yes. In that memo I did put that.

22 Q. And that it was in a property room?

23 A. I didn't put that. I just put down what
24 Mr. Perez had told me about it being confiscated.

25 Q. But you didn't do any other follow-up?

1 A. No.

2 Q. I understand. Are you familiar with the
3 New Mexico Corrections Department policies regarding
4 cameras that apply to all prisons?

5 A. I don't know it by word, but I'm familiar
6 with it.

7 Q. You're generally familiar?

8 A. Yes.

9 Q. Are you familiar with the policy that
10 requires original recordings to be secured and
11 maintained for a minimum of 10 years?

12 A. No, I'm not.

13 Q. And that's because you didn't really handle
14 anything to do with the recordings?

15 A. Exactly.

16 MS. FOX-YOUNG: Your Honor, just a moment.

17 THE COURT: Certainly.

18 Q. Did you ever meet Agent Palomares at any
19 point during the course of the investigation?

20 A. Yes, that night.

21 Q. On the 7th?

22 A. Yes, ma'am.

23 Q. And then you described handing him memos.
24 Did you meet with him when you handed him memos?

25 A. The memos were given to him at a later

1 date, not that night, because I still hadn't written
2 them.

3 Q. Okay. I understand. So on the 17th, when
4 you wrote a memo that you gave to Captain Blanco, and
5 you also gave to Agent Palomares, did you just hand
6 it to Agent Palomares, or did you actually talk with
7 him about the contents of it?

8 A. No, I believe on that one, I think it was
9 emailed to him.

10 Q. You emailed it to him?

11 A. Yeah.

12 Q. Do you know if you still have those emails?

13 A. I might on my cell.

14 Q. You have your e-mails going back to 2014?

15 A. I'm hoping I do.

16 Q. I'm sure you do a lot of emailing.

17 A. Yes.

18 Q. So some of the memos you emailed, but some
19 of them you handed to him?

20 A. Yes.

21 Q. But you gave him every memo that you wrote
22 with regard to this investigation?

23 A. Yes.

24 Q. Now, in addition to emailing him and
25 handing him the memos, did you also talk to him about

1 any of these findings?

2 A. I believe the night of, I talked a little
3 bit with him about some interviews, information I had
4 received from the interviews.

5 Q. But everything else was in writing?

6 A. Yes, everything else was in writing.

7 Q. All right. I'd like to show you --

8 MS. FOX-YOUNG: Your Honor, I'd like to
9 move the admission of Defendant Exhibit RP-NN. The
10 Government, I think, doesn't object.

11 THE COURT: Any objection?

12 MR. CASTELLANO: No objection.

13 THE COURT: Anybody else? Rudy Perez'
14 Exhibit NN will be admitted into evidence.

15 Q. All right. Looking at Exhibit NN -- it's a
16 little hard to tell with the way the light is, but it
17 appears that there is a carpeted floor. Can you see
18 that?

19 A. Yes.

20 Q. And maybe a soft piece of furniture. Do
21 you know what this is looking at? If this is taken
22 at a room located at Southern New Mexico Correctional
23 Facility?

24 A. I couldn't tell you.

25 Q. Do you know if any of the facility has a

1 carpeted floor?

2 A. Yeah, a lot of the rooms have carpeted
3 floors.

4 Q. Does the carpet look like this?

5 A. It's hard to see it in this light.

6 MS. FOX-YOUNG: Your Honor, may I approach
7 the witness?

8 THE COURT: You may.

9 Q. It's a little easier to see on the
10 original. Can you tell a little bit better looking
11 at that printout?

12 A. Yes.

13 Q. Do you know where that carpet is?

14 A. No, I don't.

15 Q. Is the STIU area carpeted?

16 A. Yes, ma'am, it is.

17 Q. Is it carpeted in this color?

18 A. Yes -- well, it's similar to this.

19 Q. Okay. Is there anything else about that
20 photograph that indicates to you where it was taken?

21 A. No, ma'am.

22 Q. Okay.

23 MS. FOX-YOUNG: Your Honor, just a moment.

24 THE COURT: Certainly.

25 Q. Is there wood paneling in that STIU area?

1 A. No, not in our office, no.

2 Q. Okay. But the carpet that you said looked
3 similar to this carpet, was that there in March of
4 2014?

5 A. Yes.

6 Q. Is there an evidence room in that area?

7 A. No, ma'am.

8 Q. Is that just the big open area?

9 A. This one right there?

10 Q. The area that's carpeted, with the carpet
11 that looks like this carpet.

12 A. Oh, yes, it's our office. It's a big room
13 with computers and desks.

14 Q. Okay. In the initial interviews that you
15 conducted the night of the murder, and the next day
16 that you've told me about --

17 A. Yes, ma'am.

18 Q. -- that you did memos of, did you learn
19 anything about the source of the shanks in the course
20 of those interviews, the shanks that were recovered
21 and -- the shanks that were recovered that night?

22 A. I believe there was a statement made that
23 it came from this particular wheelchair -- walker.

24 Q. Who do you think made a statement about the
25 piece coming from a wheelchair?

1 A. I can't remember. I'd have to look at the
2 memos.

3 Q. Okay. And do you know if those memos
4 became part of the investigative file in this case?
5 Would they be recoverable?

6 A. Yes.

7 Q. They all exist somewhere?

8 A. Yes.

9 Q. Where is that?

10 A. I probably have copies of them for sure.
11 I'm sure my supervisor also.

12 Q. Captain Blanco?

13 A. Yes.

14 Q. But you maintain a file of all of your
15 memos?

16 A. Yes, I do.

17 Q. Okay.

18 MS. FOX-YOUNG: Your Honor, I'll pass the
19 witness.

20 THE COURT: Thank you, Ms. Fox-Young.
21 Any other defendant have any questions?

22 All right. Mr. Castellano, do you have
23 cross-examination of Mr. Holguin?

24 MR. CASTELLANO: Yes, sir, I do.

25 THE COURT: Mr. Castellano.

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EXAMINATION

BY MR. CASTELLANO:

Q. Good afternoon, Mr. Holguin.

Let me ask you about paperwork. In all your years with the Corrections Department, how many times have you recovered paperwork in a case like this, where you actually found evidence of the order to kill somebody?

A. There has been a couple of instances.

Q. A couple of instances in how many years?

A. Seventeen.

Q. And what is the difficulty of recovering paperwork in a situation like that?

A. Nobody gives it up, so you have to actively be out there looking for it.

Q. And in your -- based on your training and experience, how is it that people get rid of paperwork?

A. Tear it, flush it, burn it, swallow it.

Q. So in your experience, have there been times where you've asked people about paperwork and later learned that it had been destroyed?

A. Yes.

Q. Give us some examples, if you would, about a conversation about paperwork, and why it's no

1 longer around?

2 A. Basically, it's no longer around because
3 they don't want anybody to find out about it, or be
4 traced. So, like, on certain types of drug
5 transactions, with names on it, obviously they don't
6 want people to know who is buying the drugs, or
7 whatever contraband is being introduced. And they
8 get rid of it in that manner so that we can't recover
9 it.

10 Q. And in this case you said there was a
11 shakedown group?

12 A. Yes.

13 Q. Did they find any paperwork?

14 A. I wouldn't know about that, sir.

15 Q. So, in other words, after the shakedown,
16 were you aware of anyone forwarding paperwork
17 regarding this murder?

18 A. From the shakedown crew?

19 Q. Correct.

20 A. No, sir.

21 Q. And from anyone else, were you aware of the
22 recovery of paperwork?

23 A. No, sir.

24 Q. Were you aware of whether anyone was
25 looking for the paperwork?

1 A. No, sir.

2 Q. Now, in this case, Mr. Gonzalez actually
3 told you what happened to the paperwork, didn't he?

4 A. Yes.

5 Q. And what did he tell you?

6 A. I'd have to read the memo. I don't have it
7 in front of me.

8 Q. I'll show it to you.

9 A. Okay.

10 Q. I'm showing you -- this is Defendant RP-A.
11 And for the record, it's also DeLeon 12964 on the
12 Bates stamp. I'm going to just go ahead and point to
13 it, so you don't have to read the whole document.

14 What can you tell us about the paperwork?

15 A. Just what I wrote right there.

16 Q. We have to make a record, so go ahead and
17 tell us what you read.

18 A. If you can put it up, I'll read it.

19 Q. Sure.

20 A. I put, CI looked bad so he got rid of it.
21 He said, if you look at the camera, you'll see, and
22 then give a yellow envelope to Carlos Herrera.

23 Q. You said here, what happened to the
24 paperwork?

25 A. So he got rid of it.

1 Q. Right. Who got rid of the paperwork?

2 A. He doesn't specify.

3 Q. And who are the two people we're talking
4 about? We're talking about Lupe Urquizo, a
5 conversation between him and Mr. Gonzalez; is that
6 correct?

7 A. Right.

8 Q. So one of those two people apparently got
9 rid of the paperwork?

10 A. Well, it's insinuating Urquizo.

11 Q. And this is a memo that's dated March 17 of
12 2014?

13 A. Right.

14 Q. So, in other words, 10 days after the
15 murder they tell you what happened to the paperwork?

16 A. Correct.

17 Q. So if someone tells you the paperwork has
18 been destroyed, are you going to continue looking for
19 it? Or what's your next step?

20 A. We'll continue to look for it.

21 Q. Did anybody find it?

22 A. No.

23 Q. Since this report takes place 10 days after
24 the murder, do you know from your recollection, from
25 reading this, when the paperwork was destroyed?

1 A. No, I don't.

2 Q. So you just know sometime between the
3 murder itself and 10 days later it was destroyed?

4 A. Correct. Or it could have been prior to
5 the murder.

6 Q. Why do you think it could have been prior,
7 just from your training and experience?

8 A. We don't know exactly when it came in, so
9 it could have been read and destroyed at that time
10 prior to the murder.

11 Q. And so, in other words, even though
12 paperwork may be necessary for a hit like this, once
13 everybody reviews the paperwork, is there a need to
14 keep it around anymore?

15 A. Not that I -- I wouldn't think so.

16 Q. And you also had an indication here that
17 Jason Wright was taking metal from the wheelchair
18 program. Do you recall that?

19 A. Yes.

20 Q. Now, even though there was a discussion
21 about the source of the murder weapons, is it fair to
22 say you believed you had already recovered the murder
23 weapons in this case?

24 A. Yes.

25 Q. How important to you was it at that point,

1 since you actually recovered the murder weapons, to
2 look for the source of the weapons?

3 A. It was still important, because we were
4 still looking for weapons. I believe we continued
5 days after that looking for weapons.

6 Q. Okay. Now, weapons in general, or the
7 weapons from the murder?

8 A. Weapons in general.

9 Q. Okay. So, in other words, since you had
10 the weapons from the murder, were you looking for any
11 other murder weapons from the Molina murder?

12 A. Yes, we were still looking.

13 Q. Did you find anything else that you knew or
14 believed to be those weapons?

15 A. No.

16 Q. Now, why was it important to have
17 information that Jason Wright was bringing weapons or
18 metal from the wheelchair program?

19 A. During the course of the interviews, it was
20 just questions that we were asking, trying to figure
21 out where the contraband was coming from. And these
22 were statements that were made.

23 Q. Was it one of the theories that the weapons
24 may have come from the wheelchair program?

25 A. Yes.

1 Q. Okay. I'm going to test your memory here a
2 little bit. From the initial interviews you did of
3 Timothy Martinez and the others, what did you
4 learn -- I'm going to go down the list. What did you
5 learn from Timothy Martinez about the murder from
6 your discussion with him?

7 A. I would be more comfortable referring back
8 to the memo, because I did notate exactly what was
9 said.

10 Q. Do you recall if he pointed the finger at
11 anybody?

12 A. I don't recall that he pointed the finger
13 at anybody.

14 Q. What about Mario Rodriguez, also known as
15 "Blue"?

16 A. No, I don't recall.

17 Q. What about Jerry Montoya or Jerry Armenta?

18 A. Without the memo, I couldn't.

19 Q. What about Rudy Perez?

20 A. No.

21 Q. No, you don't recall, or no, he didn't give
22 you anything?

23 A. No, he didn't say anything in reference to
24 the murder.

25 Q. When was Rudy Perez a suspect in this

1 murder in your eyes?

2 MS. FOX-YOUNG: Objection, leading.

3 THE COURT: Overruled.

4 A. In my eyes? I never had him as a suspect
5 in the murder.

6 Q. Please explain that.

7 A. Well, I know Mr. Perez, and he was not
8 healthy at the time, so I didn't -- me, personally, I
9 did not believe that he would be involved in that
10 type of activity, due to his health.

11 Q. And in addition to what you knew of him,
12 what did you hear about him and his involvement with
13 this murder?

14 A. I heard nothing other the discussion I had
15 with him about his wheelchair -- or his walker.

16 Q. So if that were the case, how much of this
17 investigation did you focus on Mr. Perez?

18 A. Me, personally? Just that memo and
19 interview that I conducted with him.

20 Q. So what was your belief, then, about his
21 walker and how it may have been involved?

22 A. It was explained on that memo.

23 Q. So, in other words, was it your belief at
24 all that he had given the pieces of his walker to be
25 made into shanks?

1 A. According to his statement, no.

2 Q. At that point, did you have anything to
3 indicate otherwise?

4 A. No.

5 Q. And based on that, how much further did you
6 look into Rudy Perez as a suspect in this murder?

7 A. That would be the extent of it right there.

8 Q. Now, is it fair to say, even for Mr.
9 Gonzalez, that you had other people who became
10 suspects?

11 A. Yes.

12 Q. Do you remember what he said -- first of
13 all, what did he say about people like "Dan Dan" or
14 Daniel Sanchez, in terms of their authority to call a
15 hit like this?

16 A. Again, without the memo, I couldn't.

17 Q. Let me start with -- this is page 12968,
18 and this is from Defendant's RP-B. I'll go ahead and
19 show you, for starters; by looking at this, do you
20 remember him telling you about a tabla or a table?

21 A. He wrote this. He didn't tell me.

22 Q. Well, did you review it and discuss it with
23 him in any way?

24 A. No.

25 Q. Now, reading this, and based on what you

1 knew about the SNM, what significance did it have
2 that people like "Dan Dan" and Carlos Herrera are
3 mentioned as being on the table?

4 A. Correct. That would indicate they were
5 some kind of decision makers within our facility.

6 Q. And what significance did that have, in
7 your mind, that they were decision makers?

8 A. That they could make decisions on anything
9 that happened in that unit.

10 Q. Including a murder?

11 A. Including a murder.

12 Q. Okay. I'm going to point out to you, so
13 you don't have to read the whole thing. It's on page
14 12972 of that exhibit. And it says, "Sparky got his
15 shank from detail. 'Dan Dan's shank was also from
16 detail. And that's the one that Scarface was caught
17 with."

18 So did you actually catch "Dan Dan," or
19 Daniel Sanchez, with any shanks as a result of these
20 searches?

21 A. Not me.

22 Q. Are you aware of anyone else?

23 A. No.

24 Q. Going back to the authority to call shots,
25 according to this witness, do you see here where Mr.

1 Gonzalez claimed he told Alex and Carlos that he was
2 going to stick this dude?

3 A. Yes.

4 Q. And do you know who he was talking about
5 when he referred to Alex and Carlos?

6 A. I'm guessing Carlos Herrera and -- I don't
7 know Alex's last name.

8 Q. I'm showing you the same page I showed you
9 earlier about the table. Was it your understanding
10 that Alex referred to Alex Munoz and Carlos Herrera?

11 A. Yes.

12 Q. Going back to page 12974. I'm going to go
13 ahead and indicate for you here as well. So on the
14 day of the murder, he was called to the door by "Dan
15 Dan." Who do you understand "Dan Dan" to be?

16 A. That's one of the individuals on the table.

17 Q. Is that Daniel Sanchez?

18 A. Yes.

19 Q. And is it your understanding here that he
20 was advised not to move on "Marijuano"; in other
21 words, "Dan Dan" was telling him not to do something?

22 A. Correct.

23 Q. Is that because he had authority to order
24 him not to do things?

25 A. Well, he's just advising him, so I guess

1 he's just telling him.

2 Q. Or, if he did, he would get dealt with?

3 A. Um-hum.

4 Q. Okay. I'm going to focus on the bottom of
5 the page now here. Do you know who "Marijuano" is?

6 A. Lupe Urquizo.

7 Q. Lupe Urquizo?

8 A. Yes.

9 Q. And so it's Mr. Gonzalez' version that when
10 "Marijuano" got his property, he noticed he was
11 giving some type of paperwork to Alex and Carlos?

12 A. Correct; that's what he wrote.

13 Q. Do you know why he would have given
14 paperwork to Alex and Carlos, as people who were on
15 the table?

16 A. No.

17 Q. And when we talk about paperwork, was it
18 your understanding that that was the paperwork that
19 would result in the murder of Javier Molina?

20 A. According to this, yes.

21 Q. So anywhere in here, in this statement, do
22 you see any mention of Rudy Perez?

23 A. No, I don't.

24 Q. Once again, you do you see the discussion
25 at the bottom of the page, page 12975 of the exhibit.

1 It says, "He asked me if he should throw the papers
2 away. I couldn't say no because it would sound
3 fishy. So I told him, 'Do what you think is right.'"
4 And so is that a discussion, once again, of the
5 paperwork on Javier Molina?

6 A. Yes, I guess so.

7 Q. Based on that statement, were you surprised
8 that there was never a recovery of the paperwork?

9 A. No.

10 Q. Are you ever surprised when you can't
11 recover paperwork such as this?

12 A. No.

13 Q. When you saw the video of the Molina
14 murder, what do you recall about how many camera
15 angles you had?

16 A. I only looked at one, so I only know of
17 one.

18 Q. So you had one angle that you were able to
19 see?

20 A. That I looked at.

21 Q. Now, you mentioned earlier that it was your
22 belief that three inmates told you about paperwork
23 the night of the murder. Do you remember that?

24 A. Yes.

25 Q. Do you remember who that was?

1 A. I don't.

2 Q. Do you remember what they said other than
3 discussion of paperwork?

4 A. Yes.

5 Q. What do you remember?

6 A. I just remember that the paperwork was
7 brought down from Santa Fe, from the facility in
8 Santa Fe, to the facility at Southern.

9 Q. And what did you or others do in response
10 to receiving that information?

11 A. What did we do?

12 Q. Yes. In other words, did you begin
13 searching for the paperwork?

14 A. Yes.

15 Q. Did you find the paperwork?

16 A. No.

17 Q. And how soon after you received that
18 information did you search for the paperwork?

19 A. This was after the homicide had already
20 occurred. So it was during that period of the
21 shakedown that they were given directives to look for
22 this paperwork also.

23 Q. So to give us an idea, it would have been
24 within a day? Within two days? What's your best
25 recollection?

1 A. Probably within hours.

2 Q. And based on the information you received,
3 where would you have searched for the paperwork?

4 A. We would have probably started in the pod.
5 With the information that we received we would have
6 probably started with that, and then worked our way
7 to there.

8 Q. And that still resulted in no finding of
9 paperwork?

10 A. As far as I know, no.

11 MR. CASTELLANO: May I have a moment, Your
12 Honor.

13 THE COURT: You may.

14 MR. CASTELLANO: Thank you, Your Honor.

15 THE COURT: Mr. Castellano.

16 BY MR. CASTELLANO:

17 Q. I just want to make sure I understood you.
18 If I understood you correctly, going back to your
19 discussion of Rudy Perez and his walker, was he a
20 suspect at all in your eyes, from the information you
21 learned and from your discussions with him?

22 A. In my eyes, no.

23 Q. And even with a piece missing from his
24 walker?

25 A. Correct.

1 MR. CASTELLANO: I pass the witness, Your
2 Honor.

3 THE COURT: Thank you, Mr. Castellano.

4 Any defendant have anything? Mr. Maynard?

5 EXAMINATION

6 BY MR. MAYNARD:

7 Q. Mr. Holguin, being with the prison system
8 corrections for a long time, you're familiar with the
9 camera operation system?

10 A. Yes.

11 Q. And you're familiar with how the different
12 pods segregate inmates out from each other? I mean,
13 it's not easy to walk from one pod to the other if
14 you're an inmate?

15 A. Correct.

16 Q. All right. And you were describing the
17 capacity or the technical capacity of the cameras a
18 while ago. The cameras go on 24 hours, 24/7?

19 A. Yes, sir.

20 Q. And digitally, do they record and then
21 overwrite, and record and overwrite?

22 A. My understanding is that, yes, they record
23 continuously, and somewhere it starts pushing stuff
24 out as it gets full.

25 Q. I mean, how much history is in the

1 recording before it's pushed out? Like a day, 24
2 hours? Two days?

3 A. I couldn't tell you exactly. I would
4 assume more than a day.

5 Q. You would assume more than a day?

6 A. Yes, because --

7 Q. Now, when you first started investigating
8 this homicide, you hadn't spoken with Mr. Gonzalez,
9 Samuel Gonzalez?

10 A. No.

11 Q. And you spoke with him, was it, how many
12 days later?

13 A. I believe I said 10.

14 Q. The 10th?

15 A. Ten days.

16 Q. Ten days later, around the 17th?

17 A. Correct.

18 Q. Okay. Now, had the cameras in the pod
19 where the homicide occurred, had the memories been
20 completely recorded?

21 A. I couldn't tell you that.

22 Q. You don't know?

23 A. No, sir.

24 Q. And you've seen what is preserved for
25 purposes of this particular case, right?

1 A. Yes.

2 Q. And how long is that?

3 A. I couldn't tell you exactly.

4 Q. Like 10 minutes?

5 A. Yeah.

6 Q. Five minutes, 10 minutes?

7 A. Like 10 minutes.

8 Q. And so, as far as you know, the rest of
9 those 24 hours, or maybe 23 hours and 50 minutes, was
10 just deleted. Has it been preserved?

11 A. I couldn't tell you if it has or hasn't.

12 Q. Now, there is also cameras covering angles
13 between pods?

14 A. Correct.

15 Q. Now, Mr. Herrera was not in that pod when
16 the homicide occurred, was he?

17 A. I don't recall where he was at.

18 Q. You don't know. Okay.

19 When did you first start focusing on
20 paperwork?

21 A. Probably right when we started conducting
22 the interviews, it was brought up.

23 Q. And how soon?

24 A. That would have been the night of.

25 Q. The night of, and there was mention of

1 paperwork?

2 A. Yes.

3 Q. All right. And the paperwork naturally
4 would be something that's exchanged between different
5 people?

6 A. Correct.

7 Q. Would there be a good probability that that
8 paperwork exchange would be on a camera?

9 A. If the camera caught it, yes.

10 Q. Was there any attempt to preserve -- and
11 apparently not, not that you know of -- there was no
12 attempt to preserve the entire memory that was
13 present in the camera after the homicide was
14 discovered?

15 A. Correct. To my knowledge, yes.

16 Q. To your knowledge. And as far as you know,
17 there was no attempt to preserve any of the memory in
18 the cameras of the neighboring pods?

19 A. Correct.

20 Q. Now, has there been any attempt to your
21 knowledge -- not just personal knowledge, but your
22 awareness that you've heard from other
23 investigators -- to try to pin down what the
24 paperwork that's missing might have been about?

25 A. Yes. But, like I said, we have no

1 resources to evaluate that, so it would be
2 speculation.

3 Q. But it would have something to do with the
4 victim of the homicide?

5 A. Yes.

6 Q. And so the state and the feds have
7 resources to trade 302s or reports of investigation
8 in which Mr. Molina was involved?

9 A. I would guess, so yes.

10 Q. Okay. And we've heard reference to a
11 Mr. -- is it, Urquizo, the name?

12 A. Urquizo.

13 Q. Urquizo. Had he been transferred from
14 another facility?

15 A. Yes.

16 Q. From Santa Fe?

17 A. Yes.

18 Q. Now, security measures are taken when
19 inmates travel from pod to pod?

20 A. Correct.

21 Q. And security measures are taken when
22 inmates travel from facility to facility?

23 A. Correct.

24 Q. And if you could describe those security
25 measures. There is a pretty thorough check of all of

1 the personal property and paperwork, is there not?

2 A. I couldn't tell you exactly what they do.

3 I could tell you what I do in reference to that.

4 Q. Well, let's first hear what you do. And
5 then, if you're aware of any policy. We'll find out
6 if you comply with policies, I guess.

7 A. When we transfer somebody out, we go
8 through their property. We strip search, pat-down,
9 place handcuffs, restraints on the individual. But
10 the most important thing is we do go through the
11 property. We do check the property.

12 Q. Okay. And the property, typically, would
13 not be a lot, but what would it consist of?

14 A. Personal stuff, their personal clothing,
15 paperwork, pictures, things of that nature.

16 Q. Okay. Now, if the paperwork looks anything
17 like a legal document, do you read it?

18 A. No. We go through it. We don't read it,
19 though.

20 Q. Okay. So you don't look -- your practice
21 is not to actually read papers?

22 A. No, not to read legal documents --

23 Q. Okay.

24 A. -- that pertains to the case.

25 Q. How about handwritten personal letters?

1 A. Yes, we'll look through that as well.

2 Q. You'll look through that. And, if you're
3 aware, would a staff member in Santa Fe or in Las
4 Cruces look through those papers in that manner when
5 a person is transferred out and transferred in?

6 A. I'm sure they do.

7 Q. And presumably there is a record of that
8 somewhere?

9 A. Yes.

10 MR. MAYNARD: No further questions.

11 THE COURT: Thank you, Mr. Maynard.

12 Anyone else? Ms. Fox-Young, do you have
13 redirect of Mr. Holguin?

14 MS. FOX-YOUNG: Thank you, Your Honor.

15 THE COURT: Ms. Fox-Young.

16 REDIRECT EXAMINATION

17 BY MS. FOX-YOUNG:

18 Q. Mr. Holguin, I think Mr. Castellano asked
19 you about recovering the murder weapons and whether
20 you continued to look for source of weapons. And you
21 said that it was important to keep looking, right?

22 A. Correct.

23 Q. And you don't know, sitting here today, do
24 you, whether the shanks recovered were the murder
25 weapons?

1 A. From the video, yes, we're assuming that
2 those are the ones that were used.

3 Q. You're assuming, though, you don't know
4 that you had the murder weapons?

5 A. Right at that time, no.

6 Q. And you don't know where they came from?

7 A. No.

8 Q. The night of -- well, during the course of
9 all of your interviews, your investigation, nobody
10 pointed the finger at Rudy Perez?

11 A. No.

12 Q. And are you aware that someone at the New
13 Mexico Corrections Department did photograph a
14 walker?

15 A. I'm personally not aware of it --

16 Q. Okay.

17 A. -- other than this picture you just showed
18 me.

19 Q. You were asked a lot of questions about
20 whether you had tracked down the murder weapons, and
21 what evidence you had collected, and what conclusions
22 you had drawn. Your job in this case was just to
23 chase down evidence, right, and conduct interviews?

24 A. Exactly.

25 Q. And it was State Police's job to

1 investigate the case and figure out who ought to be
2 charged, right?

3 A. Yes, ma'am.

4 Q. And that was Agent Palomares?

5 A. Yes, ma'am.

6 Q. With regard to the video, I just wanted to
7 clarify, you told me -- and I know you couldn't put
8 an exact time on it -- but you told me that in March
9 of 2014, you think you could go back and look at a
10 month's worth of video prior to current, right?

11 A. Yes.

12 MS. FOX-YOUNG: Thank you, Your Honor.
13 That's all.

14 THE COURT: Thank you, Ms. Fox-Young.

15 All right. Mr. Holguin, you may step down.
16 Is there any reason that Mr. Holguin cannot be
17 excused from the proceedings? Mr. Castellano?

18 MR. CASTELLANO: No, Your Honor.

19 THE COURT: How about you, Ms. Fox-Young?

20 MS. FOX-YOUNG: No, Your Honor.

21 THE COURT: Anyone else? Mr. Maynard?

22 Anybody? All right. You're excused from the
23 proceedings. Thank you for your testimony.

24 All right. Why don't we take our afternoon
25 break. We'll be in recess for about 15 minutes.

1 (The Court stood in recess.)

2 THE COURT: All right. Let's everybody
3 grab a seat. If we've got everybody with an
4 attorney. Look around and help your fellow man on
5 this. Make sure everybody has got an attorney.

6 All right. Mr. Villa, you've got your next
7 witness or evidence?

8 MR. VILLA: Your Honor, Ms. Fox-Young is
9 actually bringing back Mr. Holguin. There is some
10 new information that's come to light, so I'm going to
11 let her re-call him and examine that.

12 THE COURT: All right.

13 All right. Mr. Holguin, if you'll come up
14 and take your seat in the witness box. I'll remind
15 you that you're still under oath.

16 Ms. Fox-Young.

17 MS. FOX-YOUNG: Thank you, Your Honor.

18 FURTHER REDIRECT EXAMINATION

19 BY MS. FOX-YOUNG:

20 Q. Mr. Holguin, I apologize. I neglected to
21 ask you in your earlier testimony whether you brought
22 any paperwork with you today. Did you?

23 A. Yes, ma'am, I did.

24 Q. And is the paperwork that you brought with
25 you your investigative file related to the Molina

1 case?

2 A. Yes, ma'am, it is.

3 Q. And what does that contain?

4 A. Memos, copies of the pod, the inmates in
5 the pod at the time, and I believe some other
6 personal notes that I took during my interviews.

7 Q. Related to your investigation?

8 A. Yes, ma'am.

9 Q. And that memo that you talked to me about
10 earlier with regard to Rudy Perez' walker, and your
11 interview of him, is that in there?

12 A. Yes, ma'am, it is.

13 Q. Okay. And that memo talks about when Mr.
14 Perez told you a piece went missing from his walker,
15 doesn't it?

16 A. Yes, it does.

17 Q. What does it say about that?

18 A. I'd have to look at it again.

19 MS. FOX-YOUNG: Okay. Your Honor, I think
20 the Government has Mr. Holguin's investigative file.
21 I'd like to move its admission as an exhibit in
22 total, but I don't have it in my hands.

23 THE COURT: Any objection to that, Ms.
24 Armijo?

25 MS. ARMIJO: Yes, for several reasons.

1 One, there is information here that's not related to
2 the Molina murder, or this motion.

3 During the course of his direct
4 examination, when he was talking about memos that he
5 had written, that we had not seen, I went out to try
6 and find his file. And in looking at it, there are
7 some memos here that I know that we, prosecution,
8 don't have. And I don't believe that Palomares has
9 seen it. We will disclose it immediately. In fact,
10 I suggested that he go and copy it immediately. And
11 I don't oppose some of the items.

12 But other items have inmates' personal
13 information that we normally redact. There is
14 information in here about other homicides that we
15 would be opposed to -- that are some that are
16 possibly ongoing investigations, that we would object
17 to.

18 We certainly don't object to the admission
19 of this 3/14/14. We just need to make a copy,
20 because this is the only copy that could be in
21 existence.

22 THE COURT: Let me have Ms. Fox-Young --
23 and maybe you could ask him some questions -- what is
24 this? It sounded like, when you were questioning Mr.
25 Holguin, it was the investigation file for the Molina

1 murder. Now, Ms. Armijo seems to look at it, and her
2 description of it is it may be much broader than
3 that; just murders. Do you want to talk to him a
4 little bit about what's in this file?

5 BY MS. FOX-YOUNG:

6 Q. Certainly. Mr. Holguin, I know you said
7 that this file contains memos related to the Molina
8 murder; is that right?

9 A. Yes, ma'am.

10 Q. And also notes related to the Molina
11 murder?

12 A. Yes.

13 Q. Does it contain anything that, in your
14 opinion, is unrelated to the murder? Is it all work
15 that you did in this investigation?

16 A. There is probably some stuff in there
17 that's unrelated to the murder.

18 Q. Okay. Have you reviewed it?

19 A. Not recently.

20 Q. But you brought it in response to our
21 subpoena today, as responsive on this case?

22 A. Yes, ma'am.

23 MS. FOX-YOUNG: Your Honor, we've had only
24 a moment, maybe 30 seconds, to look at the file. It
25 clearly contains Brady material. And if the Court

1 would like, I can get into the details. I don't
2 think the Government objects. I don't think the
3 Government will tell you it's not Brady. It's pretty
4 significant, and it's highly relevant to our motion.
5 The problem is we take time -- I mean, I don't want
6 to waste the rest of the Court's day messing around
7 with what is or isn't in it, and I would suggest that
8 maybe we could have it admitted under seal.

9 I understand that there is confidential
10 information the Government is concerned about
11 disclosing. But we don't want to lose any of the
12 contents. And there is Brady in there that should
13 have, frankly, been disclosed to the defense a long
14 time ago. I think, for the Government to say now
15 they're going to make a determination about what's
16 relevant and what isn't, is somewhat problematic. I
17 think, if we can just get it admitted, and it's under
18 the seal, and maybe the Court can review it in
19 camera, then we don't have a problem with any
20 documents disappearing.

21 THE COURT: Well, I think it's in the
22 Government's possession. I don't think any documents
23 are going to disappear. Why don't we do this: Why
24 don't we give it an exhibit number, and it will just
25 be a placeholder right now for those documents that

1 the Government is going to turn over. And then, if
2 we have a dispute on some, then we'll work out a way
3 to resolve it. So why don't you give me a number.
4 What's your next number?

5 MS. FOX-YOUNG: It's RP-OO, Your Honor.

6 THE COURT: Should have remembered,
7 shouldn't I? All right. So is this an acceptable
8 way to do it?

9 MS. ARMIJO: Yes, Your Honor.

10 THE COURT: All right. So I'll admit
11 RP-OO. We don't exactly know the contents of it.
12 But it will be at least some materials that the
13 Government, after reviewing Mr. Holguin's file, are
14 willing to produce. And then, if there is some that
15 they don't produce, we'll figure out what we're going
16 to do with that.

17 MS. FOX-YOUNG: Your Honor, I think it
18 might make sense if we move to admit the one memo
19 that the Government doesn't object to admitting,
20 that's clearly related to Rudy Perez and Mr.
21 Holguin's investigation with regard to the walker.
22 It's just, I think, a three-page document. And I
23 don't think the Government believes it needs to be
24 redacted. If we could move its admission as a
25 separate exhibit and get that in the record.

1 THE COURT: Any objection to that, Ms.
2 Armijo?

3 MS. ARMIJO: As long as I can go get a copy
4 of it because this is the only copy we have.

5 THE COURT: All right. So that copy of
6 that three-page memo will be admitted as Rudy Perez'
7 Exhibit RP-PP; correct?

8 MS. FOX-YOUNG: Yes, Your Honor.

9 THE COURT: Anybody got a problem with the
10 way we're doing this? All right. So it will be
11 admitted into evidence.

12 BY MS. FOX-YOUNG:

13 Q. Mr. Holguin, I only have one copy of this
14 memo, and I don't know, did you have a chance to look
15 at it today?

16 A. No.

17 Q. Okay.

18 MS. FOX-YOUNG: Your Honor, may I approach
19 the witness?

20 THE COURT: You may.

21 Q. Mr. Holguin, is this another memo that you
22 drafted for Captain Blanco?

23 A. Yes, ma'am, it is.

24 Q. And what is the date on it?

25 A. 3/14/14.

1 Q. Okay. And you maintained a copy for
2 yourself and submitted one to Captain Blanco?

3 A. Yes.

4 Q. And you also submitted one to Agent
5 Palomares?

6 A. Yes.

7 Q. And did you submit that to Agent Palomares
8 by email or by hand?

9 A. I can't remember.

10 Q. One or both?

11 A. Yes, ma'am.

12 Q. And if you did send to it him by email, you
13 might still have those emails?

14 A. Yes, ma'am.

15 Q. We talked earlier about Mr. Perez' walker
16 and the memo that you wrote with regard to the
17 missing part. Is this the memo you were talking
18 about?

19 A. Yes, ma'am, it is.

20 Q. And this has been admitted as -- or, Your
21 Honor, I move the admission of Defendant's Exhibit
22 PP.

23 THE COURT: We've admitted it.

24 Q. It's in evidence.

25 In this memo do you tell Captain Blanco and

1 Agent Palomares anything about a part that was
2 missing from Rudy Perez' walker?

3 A. Yes. Through this memo, yes, I do.

4 Q. What did you tell them?

5 A. I advised them in the memo where it states
6 that a piece of metal was taken from his walker. And
7 there was two nuts laying on the floor, was how he
8 knew it was missing.

9 Q. Okay. Did your memo say anything about
10 when that piece went missing?

11 A. I don't have a date on it. I just -- where
12 he advised me that they were conducting shakedowns in
13 his unit, and found that the metal part was missing
14 from it. And that's why they confiscated his walker,
15 three to four weeks ago, prior.

16 Q. So your memo is dated March 14, 2014?

17 A. Yes, ma'am.

18 Q. Is that the day -- I'm sorry, you say in
19 the memo that you conducted the interview the day
20 before?

21 A. Yes.

22 Q. And as you just said, you learned from Mr.
23 Perez, he told you that he noticed the part was
24 missing three to four weeks prior?

25 A. Yes.

1 Q. So that would put the part missing sometime
2 in February?

3 A. Yes.

4 Q. Well in advance of Javier Molina's death?

5 A. Yes.

6 Q. And apart from providing this information
7 to Agent Palomares and Captain Blanco -- Coordinator
8 Blanco, did you do anything else to chase down what
9 might have happened to that walker?

10 A. No, ma'am, I didn't.

11 Q. In the course of your memo, you also talk
12 about Mr. Perez telling you that he wasn't a part of
13 the murder; is that right?

14 A. Correct, the memo, yes.

15 Q. And that he had heard some things after the
16 fact, but that he wasn't a part of it, and that he
17 was in his cell that night?

18 A. Correct.

19 MS. FOX-YOUNG: Thank you, Your Honor.

20 I'll pass the witness.

21 THE COURT: Any other questions, Mr.
22 Castellano?

23 MR. CASTELLANO: Yes, Your Honor.

24 THE COURT: All right. Mr. Castellano.

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EXAMINATION

BY MR. CASTELLANO:

Q. Okay. Mr. Holguin, this is the same Exhibit RP-PP, and what we're talking about here is a statement where Mr. Perez claimed the parts went missing three or four weeks ago. Do you see that?

A. Yes.

Q. By his claim, this would be a time before the Javier Molina murder?

A. Correct.

Q. And then at the bottom of the page, there is an indication where you ask him what he knew about the murder. Do you see that?

A. Yes, I do.

Q. And then he just claimed he wasn't part of it. He claimed he didn't see anything. And that he saw Javier Molina on the floor; is that correct?

A. Yes.

Q. But he did hear afterwards, in segregation, that everybody knew there was paperwork on Molina, and they had been waiting for it for a while to come in?

A. Correct.

Q. Do you know how long people had been waiting for the paperwork, from your conversation

1 with Mr. Perez?

2 A. No, I don't.

3 Q. And are you aware of any later evidence,
4 where Mr. Perez admitted that the shanks came from
5 his walker?

6 A. No.

7 MR. CASTELLANO: I pass the witness, Your
8 Honor.

9 THE COURT: Thank you, Mr. Castellano.
10 Anything further, Ms. Fox-Young?

11 MS. FOX-YOUNG: Nothing further.

12 THE COURT: All right. Mr. Holguin, you
13 may step down. Thank you for your testimony.

14 All right. Ms. Fox-Young, Mr. Villa, does
15 Mr. Perez have his next witness or evidence?

16 MS. FOX-YOUNG: Yes, Judge. Mr. Perez
17 calls Adam Vigil.

18 THE COURT: Mr. Vigil, if you'll come up
19 and stand next to the witness box on my right, your
20 left. Before you're seated, the courtroom deputy Ms.
21 Standridge will swear you in.

22

23

24

25

1 ADAM VIGIL,
2 after having been first duly sworn under oath,
3 was questioned and testified as follows:

4 DIRECT EXAMINATION

5 THE CLERK: Please be seated. And state
6 your name for the record.

7 THE WITNESS: My name is Adam Vigil.

8 THE COURT: Mr. Vigil. Ms. Fox-Young.

9 BY MS. FOX-YOUNG:

10 Q. Good afternoon, Mr. Vigil.

11 A. Good afternoon.

12 Q. Can you tell me where you're currently
13 employed?

14 A. I'm currently employed with the New Mexico
15 Department of Corrections at the Penitentiary of New
16 Mexico, in Santa Fe.

17 Q. How long have you been at the Penitentiary
18 of New Mexico, working for NMCD?

19 A. Approximately 34 years.

20 Q. What is your position?

21 A. I'm the STIU coordinator.

22 Q. How long have you been in that job?

23 A. This time around 10 years.

24 Q. So the last 10 years you've been doing that
25 job?

1 A. Yes.

2 Q. And is there anybody in STIU who you report
3 to? Are you at the top of STIU?

4 A. I'm a coordinator. I have two other
5 individuals above me.

6 Q. Who is above you?

7 A. Two other individuals. We have a deputy
8 director and an STIU administrator.

9 Q. Can you tell me their names?

10 A. Currently, the deputy director position is
11 vacant. And acting administrator is Andrew Sweeney.

12 Q. And in March of 2014, you were the STIU
13 coordinator for the state?

14 A. For the Penitentiary of New Mexico.

15 Q. For the Penitentiary of New Mexico. And
16 was there a separate coordinator, STIU coordinator,
17 for Southern New Mexico Correctional Facility?

18 A. Yes.

19 Q. Who was that?

20 A. I believe it was Daniel Blanco at the time.

21 Q. And is he still the coordinator?

22 A. Yes.

23 Q. Do you remember -- do you have an
24 independent recollection of anything related to
25 Javier Molina's death on March 7, 2014, at Southern?

1 A. As to what?

2 Q. Do you remember that case?

3 A. I remember the murder, yes.

4 Q. Did you go to Las Cruces after the murder?

5 A. Yes.

6 Q. When did you go?

7 A. That was a while back. I can't remember
8 exactly when, but it was either a month or a week
9 after.

10 Q. Either a month or a week?

11 A. Somewhere in between there.

12 Q. Okay. And when there is a murder anywhere
13 in a New Mexico Correctional Department facility, do
14 you always go in your current position?

15 A. No. Sometimes different coordinators are
16 designated to do different things. And I happened to
17 be the one that was sent down there.

18 Q. Who sent you down there?

19 A. My boss. I believe it was either Andrew
20 Sweeney, or Dwayne Santistevan.

21 Q. So you got the word from Mr. Santistevan or
22 Mr. Sweeney that you needed to go to Southern because
23 there had been a murder?

24 A. Yes.

25 Q. And you drove down to Las Cruces?

1 A. Yes.

2 Q. And the investigation was already underway
3 when you arrived?

4 A. Yes. Pretty much it was already done and
5 over with.

6 Q. Okay. Tell me what you did with regard to
7 that case.

8 A. I was one of the components that went down
9 there to conduct an after action review of the
10 incident.

11 Q. Is that customary for all murders?

12 A. It's customary for major incidents.

13 Q. What does it consist of? What does an
14 after action review consist of?

15 A. This group of individuals are sent down
16 there to assess what happened, you know, what to look
17 for, and see if any discrepancies occurred during or
18 after the incident occurred.

19 Q. Who else was part of this after action
20 review?

21 A. It was myself, Ms. Visti Curry.

22 Q. Could you repeat that?

23 A. Her name is Visti Curry.

24 Q. Who is she?

25 A. She currently holds the rank of Deputy

1 Warden at Central New Mexico Correctional Facility.

2 Q. And Mr. Santistevan or Mr. Sweeney also
3 selected her for this job?

4 A. I don't know who selected her.

5 Q. Okay. But you both arrived at the same
6 time?

7 A. No. I believe she was already there before
8 I was.

9 Q. Okay. What happened when you got there?

10 A. We were given different tasks. We had a
11 briefing on the different tasks that we were assigned
12 to do.

13 Q. Who assigned you tasks?

14 A. I believe it was Warden Missy Ortiz.

15 Q. She was the Warden at Southern?

16 A. Yes.

17 Q. What were your tasks?

18 A. My particular task was to go and look at an
19 area called the wheelchair project.

20 Q. Did you go by yourself?

21 A. No. I had a group of people with me, a
22 little team.

23 Q. Who was on that team?

24 A. I don't recall.

25 Q. Was Ernie Holguin on that team?

1 A. I don't believe so.

2 Q. How many people?

3 A. Maybe four.

4 Q. So the Warden asked you to go look at the
5 wheelchair program?

6 A. That was one of my -- that was my task was
7 to go look at the wheelchair.

8 Q. From the Warden?

9 A. From the Warden -- or yeah, it was from the
10 Warden and maybe Major -- not major -- yeah, Major
11 Herman.

12 Q. Was a Major at Southern?

13 A. Yes.

14 Q. And so you did that; you went and visited
15 the wheelchair program?

16 A. Yes, we went and checked out the area.

17 Q. What did you do to check it out?

18 A. We went in there. We looked at what was
19 going on in there. We checked inventories. We
20 checked the tool system. We checked the shakedown
21 procedure areas. Just basically did a scan of what
22 was going on in that particular room.

23 Q. When you say you checked inventories, did
24 you mean you checked inventories of all the metal
25 that it was in there?

1 A. No. That wasn't -- the way it was
2 explained to me by the project manager that was there
3 then -- and I don't recall his name --

4 Q. Was that Ernie Rodriguez?

5 A. I don't know.

6 Q. Okay. Go on.

7 A. Anyway, first thing we did was check the
8 tools and the inventory to see if they were going on
9 there. We checked on how they brought in the
10 wheelchairs, how they were taken apart, disassembled,
11 and how they put different parts in different bins
12 and stuff.

13 Q. What were you looking for?

14 A. Anything that could be fashioned into a
15 weapon.

16 Q. And did you find that they could?

17 A. Well, there are several items on a
18 wheelchair that could be fashioned into a weapon,
19 yes.

20 Q. There is a lot of metal in that program?

21 A. Metal as to what?

22 Q. Lots of different kinds of metal used in
23 that program?

24 A. Yeah. For the chairs that are made out of
25 metal, yes.

1 Q. And did you see walkers?

2 A. No, I saw mainly wheelchairs.

3 Q. Mainly wheelchairs?

4 A. Um-hum.

5 Q. Did you catalog what was there?

6 A. No.

7 Q. Did anybody catalog what was in there?

8 A. I saw some documents from the project
9 manager on how they get boxes of stuff in. But there
10 was nothing individually cataloged, no.

11 Q. Did you make copies of those documents?

12 A. No.

13 Q. You just viewed them when you were in
14 there?

15 A. Yes.

16 Q. Did you photograph the wheelchair program?

17 A. No.

18 Q. Did anybody?

19 A. No. Not my little team, no.

20 Q. Did you generate a report?

21 A. I did a briefing at the end of our little
22 stay. And then I passed on some information to
23 Ms. Curry, who was the team leader.

24 Q. Was that an oral briefing?

25 A. Yes.

1 Q. Who was present?

2 A. There was a bunch of us there. I can't
3 recall everybody who was there.

4 Q. STIU officers?

5 A. No. The only one that maybe had been
6 there, Daniel Blanco; that's about it.

7 Q. And a bunch of others?

8 A. Yes.

9 Q. Were they all NMCD employees?

10 A. Yes.

11 Q. Any State Police?

12 A. No.

13 Q. Were they all employees at Southern New
14 Mexico?

15 A. Yes.

16 Q. So you gave an oral briefing, and then you
17 met with the Warden?

18 A. Well, she was one of the members in that
19 briefing.

20 Q. Okay. And what was message of your
21 briefing? What was the substance of it?

22 A. That there was poor accountability on some
23 of the equipment that was there.

24 Q. You said "poor"?

25 A. Yes. The shakedown procedures needed to be

1 enhanced a little bit.

2 Q. What was faulty about the procedures?

3 A. Just the coverage of one person in that
4 particular area. There should have been at least
5 two.

6 Q. So while the inmates were in there working
7 on the wheelchair program, there was just one person?
8 Is that what you were saying?

9 A. There was one supervisor, yes.

10 Q. And while they were shaken down, there was
11 only one person?

12 A. Yes.

13 Q. And you found that that was problematic?

14 A. Yes.

15 Q. What else did you brief the Warden and
16 others on?

17 A. That was it. That was my assignment, and I
18 was done.

19 Q. Do you know what prompted the Warden to ask
20 you to review the program?

21 A. Well, the murder happened; that's why I was
22 down there. I would have been part of an after
23 action team.

24 Q. But why, in particular, did you go to the
25 wheelchair program?

1 A. That was the task I was assigned to go do.

2 Q. Okay. You don't, yourself, know why?

3 A. No.

4 Q. You said you had tasks as part of this
5 after action procedure. Did you have additional
6 tasks besides the one you told me about?

7 A. No. Just look at the tool inventories, how
8 the equipment came in and out; shakedown procedures;
9 and this was it.

10 Q. Okay. And you gave an oral briefing, and
11 then you were done?

12 A. Yes.

13 Q. Did you have anything to -- did you view
14 any evidence in this case?

15 A. No.

16 Q. Did you collect any evidence?

17 A. No.

18 Q. Did you maintain any evidence back in Santa
19 Fe at your office?

20 A. No.

21 Q. So you didn't look at any physical evidence
22 while you were down there whatsoever?

23 A. No.

24 Q. Except for anything that was in the
25 wheelchair program?

1 A. That's it.

2 Q. Okay. Are you familiar with the
3 Corrections Department's inventory chain of custody
4 forms?

5 A. To an extent, yes.

6 Q. Have you ever completed one?

7 A. Yes.

8 Q. And you don't think you did one in this
9 case?

10 A. I don't believe so.

11 Q. Okay. If I represented to you that the
12 Government has produced a chain of custody form that
13 has the name "A. Vigil, STIU Coordinator" on it, is
14 it possible that's you? Or --

15 A. Yeah, it more than likely is.

16 Q. Okay. I know it's been a while.

17 A. Yes.

18 Q. Would it refresh your memory -- well, are
19 you sure that you didn't complete a chain of custody
20 form in this case?

21 A. Not that I recall. But if you have a
22 document saying I did --

23 Q. It's possible you did? Would it refresh
24 your memory if I showed you a chain of custody form?

25 A. Sure.

1 Q. Do you recognize that document?

2 A. Yes.

3 Q. Do you know what it is? Can you tell me
4 what it is?

5 A. It's a chain of custody form.

6 Q. Okay. And without telling me anything that
7 is contained in it, you recognize that form?

8 A. Yes.

9 Q. And did you actually complete that form?

10 A. No, I did not.

11 Q. Is your name anywhere on that form?

12 A. My name is typewritten at the top as
13 "evidence recovered by," and then somebody printed my
14 name down at the bottom there.

15 MS. ARMIJO: Your Honor, can we have a
16 Bates stamp number, at least for reference?

17 MS. FOX-YOUNG: Yes. It is 30188.

18 Your Honor, I'd like to move the admission
19 of Defendant's PP -- I think that's what we're on.

20 THE COURT: I think we already have --

21 MS. FOX-YOUNG: QQ.

22 THE COURT: All right. Any objection, Ms.
23 Armijo?

24 MS. ARMIJO: No, Your Honor.

25 THE COURT: Any objection from anyone else?

1 All right Rudy Perez' Exhibit QQ will be
2 admitted into evidence.

3 BY MS. FOX-YOUNG:

4 Q. Mr. Vigil, on this chain of custody form
5 that you looked at you, you noted that your name is
6 printed at the top, and your name is written in at
7 the bottom in these areas to fill in receipt or
8 transfer of evidence; is that right?

9 A. That's correct.

10 Q. But you didn't write that?

11 A. No, that's not my writing.

12 Q. Do you know who did?

13 A. No, I don't.

14 Q. This chain of custody form appears to be
15 for a DVD of video evidence; is that right?

16 A. Yes, that's what it says on the first
17 number 1 line there.

18 Q. And it's from March 13, 2014?

19 A. Yes. That's the date of evidence
20 recovered, 3/13.

21 Q. It says, "The DVD of video evidence was
22 recovered on March 13, 2014," which was six days
23 after the Molina murder; is that right?

24 A. Yes.

25 Q. And it says the "evidence was recovered by

1 A. Vigil, STIU coordinator." And that's you?

2 A. Apparently so, yes.

3 Q. But you don't remember recovering it?

4 A. No, I don't recall it. It's been a while.

5 Q. Do you have any reason to disbelieve that,
6 based upon this chain of custody form, you did
7 recover it?

8 A. Can you repeat the question?

9 Q. Oh, do you have any reason to disbelieve
10 that you recovered it, based upon this chain of
11 custody form that the Government has produced?

12 A. No.

13 Q. Okay. Well, if you can just tell me, does
14 this show that -- if you look at the bottom where
15 it's written in in somebody's handwriting, it says,
16 "April 11, 2014, 4:40 p.m." And then it has your
17 name. And it says, "Transfer." Would this indicate
18 that the video evidence was transferred to somebody
19 else on April 11, 2014?

20 A. Yes.

21 Q. Do you know who that person is?

22 A. No, I don't.

23 Q. Do you -- I know you don't specifically
24 recall taking in video evidence in this case. Do
25 you, as a practice, take in evidence in other cases?

1 A. Cases that I handle at my facility, I do.

2 Q. Just at PNM?

3 A. Yes.

4 Q. And where do you keep that evidence?

5 A. We have a secured area, evidence locker
6 area, we secure evidence in.

7 Q. And if you had taken in the video evidence
8 in this case, is that where it would have been, at
9 PNM, according to this form?

10 A. No. I don't recall taking it to PNM.

11 Q. Did you have any part in a disciplinary
12 officer's investigation report of Mario Rodriguez in
13 this case?

14 A. Not that I recall.

15 Q. You don't remember doing that?

16 A. No, I don't remember. Like I said, it's
17 been a while.

18 Q. This is Bates 30174 and 75. Mr. Vigil, do
19 you recognize this document?

20 A. Yes.

21 Q. Okay. If you can, tell me what it is.

22 A. It's a disciplinary officer's investigative
23 report.

24 Q. Okay. And you said you don't remember
25 having anything to do with any evidence related to

1 Mario Rodriguez, or the Molina murder, taking it in.
2 But if you look at the second page of that document,
3 you see where I've highlighted at the bottom?

4 A. Yes.

5 Q. Does that refresh your recollection as to
6 your role with the evidence?

7 A. It refreshes my memory, yes.

8 Q. Okay. And so, having looked at that, what
9 do you now remember?

10 A. That I took it with me.

11 Q. What was it?

12 A. The videotape.

13 Q. Okay.

14 A. The video, DVD, or whatever you call it.

15 Q. And you kept it in your office?

16 A. Yes.

17 Q. And this is just your personal office at
18 PNM?

19 A. Yes. And I'm the only one who has access
20 to it.

21 Q. Oh, you're the only one with access?

22 A. Yes.

23 Q. Okay. Do you sometimes keep other evidence
24 in that office?

25 A. No.

1 Q. This was a unique circumstance?

2 A. Yeah. I think it was -- this case was
3 going on at the time is why I held onto it.

4 Q. Why didn't it go to State Police?

5 A. That, I don't know.

6 Q. Did you ever view the video when you had it
7 in evidence?

8 A. No.

9 Q. So this is the only time in your 34-year
10 career at PNM that you've ever taken in evidence and
11 put it in your office?

12 A. Yes.

13 Q. And did somebody instruct you to do that?

14 A. I think it was just a transfer of the
15 evidence for the case up in Santa Fe. It wasn't
16 there to be permanent, just to be made part of case
17 to turn over to somebody else.

18 Q. Okay. So you remember you transferred it
19 to somebody else, to this A -- on Exhibit QQ, it
20 appears to be a name that starts with a W. You're
21 not sure who that is?

22 A. No, I don't.

23 Q. Okay. Is it possible that you also took
24 other evidence to your office at the same time as you
25 took that video evidence?

1 A. No.

2 Q. It's not possible?

3 A. No.

4 Q. How do you know?

5 A. Because there would have been other forms
6 generated, if I had taken more evidence.

7 Q. Okay.

8 MS. ARMIJO: No objection.

9 MS. FOX-YOUNG: Your Honor, I'd like to
10 admit Defendant's RR.

11 THE COURT: I heard you say "no objection,"
12 Ms. Armijo.

13 MS. ARMIJO: No objection.

14 THE COURT: All right. Anybody else have
15 an objection? All right. Rudy Perez' Exhibit RR
16 will be admitted into evidence.

17 Q. So Mr. Vigil, it's your testimony that for
18 the first time in 34 years, or at least in 2014 it
19 was the first time, or the only time, you took
20 evidence, the video evidence from this case to your
21 office in Santa Fe, but you don't know precisely why?

22 A. No, other than maybe I turned it over to
23 the disciplinary officer. But that was it.

24 Q. And this document, Exhibit RR, which you
25 just looked at, indicates -- and you agreed that --

1 this was to allow for your completion of the after
2 incident review. Do you recall that?

3 A. No.

4 Q. This is the second page of this
5 disciplinary officer's investigation report. The
6 very last paragraph reads, "The video evidence stayed
7 secure in STIU Coordinator A. Vigil's office, to
8 allow for his completion of the after incident
9 review." You don't dispute that that is what this
10 investigator concluded?

11 A. He may have. If that's what he put, then
12 that's probably what I did. Like I said, it's been
13 quite a while.

14 Q. Okay. But you say that your only task as
15 far as the after incident review was concerned, was
16 to go to the wheelchair program?

17 A. Right.

18 Q. You didn't have anything to do with the
19 video evidence?

20 A. No. Not that I recall, no.

21 Q. Okay. You didn't watch it. You didn't
22 take it -- other than taking it into evidence and
23 holding it in your office in Santa Fe?

24 A. I remember watching it one time, when I
25 initially went for the state case, on the trial.

1 Q. Where was that?

2 A. That was at the DA's here in Dona Ana
3 County.

4 Q. Did you go for a pretrial interview and you
5 watched it?

6 A. Yes.

7 Q. Okay. So that wasn't as part of the
8 investigation; it was after the fact?

9 A. Right.

10 Q. And it's your testimony that you didn't
11 have anything to do with any other physical evidence
12 at Southern on this case outside of the wheelchair
13 program?

14 A. Yes.

15 Q. Did you ever see a walker that was taken
16 into evidence?

17 A. No.

18 Q. Never saw one. Did you ever see a
19 photograph of one?

20 A. No.

21 Q. Are you aware that a walker was taken in?

22 A. No, I wasn't aware a walker was taken in.

23 Q. Okay. You're only aware of the various
24 ambulatory devices that you saw in the wheelchair
25 program, but you don't know if anything was taken

1 into evidence?

2 A. No, I don't.

3 Q. Okay. Did you bring any files with you
4 today --

5 A. No.

6 Q. -- in response to the subpoena?

7 A. No. I didn't know why I was here to begin
8 with.

9 Q. Do you have any files or documents related
10 to the Javier Molina murder?

11 A. No.

12 Q. Do you have any emails?

13 A. Emails, no.

14 Q. Did you talk to anybody with State Police
15 about this murder?

16 A. I sat in on an interview with one suspect.
17 But that was it.

18 Q. Who was the suspect?

19 A. Armenta.

20 Q. And who else was at that interview?

21 A. Detective Paul Garnice (phonetic).

22 Q. Do you recall the date of that interview?

23 A. No, I don't.

24 Q. It was not the day of the murder?

25 A. No.

1 Q. It was later?

2 A. Later.

3 Q. And so you had occasion to talk to
4 Detective Palomares at that time?

5 A. Well, I transported Inmate Armenta to the
6 State Police headquarters, and there was an interview
7 conducted.

8 Q. You transported him?

9 A. My crew did, me and my crew.

10 Q. You drove him from Southern to State
11 Police?

12 A. No. I believe he was housed at PNM at the
13 time.

14 Q. And was this in March of 2014, or this was
15 later?

16 A. This was later.

17 Q. When you -- was it in 2014?

18 A. I don't recall.

19 Q. Was it -- you don't know what year it was?

20 A. No, I don't recall. I just know we
21 assisted with transporting this inmate to the State
22 Police, and that was it.

23 Q. Was it close in time to the murder?

24 A. I don't recall.

25 Q. But you sat in on the interview?

1 A. Yeah.

2 Q. Did you take any notes?

3 A. No.

4 Q. And at that time, you talked to Agent
5 Palomares about the case?

6 A. I didn't talk to him, no. They said this
7 guy was a suspect, and he was going to interview him.

8 Q. Okay. Are you generally familiar with the
9 New Mexico Corrections Department policies and
10 procedures?

11 A. Pretty much.

12 Q. Have you been trained on them?

13 A. I reviewed and trained on some, yes.

14 Q. You probably had a part in drafting and
15 revising them, too?

16 A. Yes.

17 Q. Okay. I don't know if you know it by
18 number, but are you familiar with the policy on
19 cameras, video, portable stationary, pan, tilt and
20 zoom?

21 A. No.

22 Q. I'm going to show you what's been marked as
23 RP-KK. Do you know what this is?

24 A. According to the heading up there, it's a
25 policy for New Mexico Department of Corrections.

1 Q. So it's a single policy in the New Mexico
2 Corrections Department policy manual?

3 A. Yes.

4 Q. And you see the date on it?

5 A. Which one?

6 Q. Well, the last date. It was effective
7 when? It was last revised when?

8 A. The review revised date is 2/29/12.

9 Q. And you've never reviewed this policy?

10 A. I may have. I may have skimmed it and gone
11 through it. But I couldn't tell you verbatim what it
12 is.

13 Q. Okay. I don't expect you to be able to
14 recite it verbatim. But do you recall the
15 requirement and policy that original video recordings
16 be properly secured and maintained for a minimum of
17 10 years?

18 A. No.

19 Q. Well, in this policy, that requirement is
20 right here in the middle of the page, under
21 Subsection B, "Storing of video recordings." Do you
22 see where it says that, "The original recording shall
23 be properly secured and maintained for a minimum of
24 10 years"?

25 A. The first paragraph?

1 Q. Yes, Subsection B 1.

2 A. Yes.

3 Q. And looking at that now, are you familiar
4 with that requirement in NMCD policy?

5 A. I am now.

6 Q. You are now. Okay. Do you have any reason
7 to disbelieve that this document is the policy that
8 was last revised on February 29, 2012? In form, does
9 it appear to be an NMCD policy on cameras?

10 A. Yes.

11 Q. You just don't know it by heart?

12 A. No.

13 Q. Do you remember any other STIU personnel
14 that you worked with at Southern on the Molina
15 investigation?

16 A. No, other than my counterpart, Daniel
17 Blanco. But it's his facility.

18 Q. Okay. And have you talked with Captain
19 Blanco -- or Coordinator Blanco about this case?

20 A. No.

21 Q. Not at any time?

22 A. No. My involvement in the case was, like I
23 said, for the initial state trial. And we haven't
24 discussed the case with anybody since then.

25 Q. But back in March of 2014, after the

1 murder, did you work with Captain Blanco on this
2 case?

3 A. No.

4 Q. Was he present at your briefing?

5 A. I believe so.

6 Q. Okay. So other than that?

7 A. Other than that, I don't believe.

8 Q. Okay. Now, at PNM, you must be familiar
9 with the Corrections Department policy governing
10 contraband control, tracking, and disposal, right?

11 A. Yes.

12 Q. Are you familiar with the requirement that
13 when contraband is seized from an inmate, that inmate
14 receives a receipt?

15 A. Contraband?

16 Q. Yeah. When somebody is shaken down and
17 contraband is seized, is there a document that gets
18 generated? Or is there a contraband log?

19 A. Contraband log; there is a contraband log.
20 There is a log, but the inmate is not required to get
21 a receipt of that.

22 Q. Just -- it's only logged?

23 A. It's only logged, yes.

24 MS. FOX-YOUNG: Your Honor, I move the
25 admission of Rudy Perez exhibit -- I think we're at

1 PP? No, we're not.

2 THE COURT: I think your next one is SS.

3 MS. FOX-YOUNG: SS. Thank you, Judge.

4 MS. ARMIJO: No objection.

5 THE COURT: Is it RR? Any objection to
6 Rudy Perez' Exhibit RR? It was SS. So SS will be
7 admitted into evidence.

8 BY MS. FOX-YOUNG:

9 Q. So this document, Exhibit SS, I think is
10 the Corrections Department policy governing
11 contraband control, revised January 25, 2012, is it
12 not?

13 A. Yes.

14 Q. And at the bottom, the attachments include
15 a miscellaneous contraband log?

16 A. Yes.

17 Q. And is that the document that you're saying
18 does get filled out when contraband is seized?

19 A. I have to actually look at the log that
20 you're talking about.

21 Q. I understand. But the reference to the
22 contraband log, that's what you're talking about,
23 gets filled out when contraband is seized, and that's
24 required by policy?

25 A. That's a log that gets filled out. It's a

1 general log. If I remember the policy, if I'm being
2 correct, the log itself is just a general log.

3 Q. For contraband, when it's seized?

4 A. That's correct. But the inmate doesn't get
5 a copy of that.

6 Q. I understand. And this is the policy that
7 requires that, that you're looking at, this NMCD
8 090300?

9 A. Yes.

10 Q. Okay, thank you.

11 MS. FOX-YOUNG: Your Honor, I move
12 Defendant's Exhibit TT.

13 THE COURT: Any objection, Ms. Armijo?

14 MS. ARMIJO: No, Your Honor.

15 THE COURT: Any other defendant? All right
16 Rudy Perez's Exhibit TT will be admitted into
17 evidence.

18 Is there somebody on the telephone that
19 doesn't have their mute button on? Y'all might put
20 the mute button on. Check it, because we're getting
21 a lot of feedback here.

22 BY MS. FOX-YOUNG:

23 Q. The New Mexico Corrections Department also
24 has a separate policy on inmate property; is that
25 right?

1 A. Yes.

2 Q. And is that what we're looking at here on
3 Exhibit TT, revised September 4, 2013?

4 A. Are you talking about the policy name?

5 Q. Yes. Is that this policy, the inmate
6 property policy from -- that was revised September 4,
7 2013, and in effect in March of 2014?

8 A. Yes.

9 Q. And this separate policy requires, does it
10 not, that a receipt for confiscated property form be
11 filled out when property is confiscated?

12 A. Yes.

13 Q. And that form is listed there on this first
14 page?

15 A. Yes, it's the highlighted one you have
16 there.

17 Q. Yes.

18 I understand that you did an oral briefing
19 after the conclusion of your review of the wheelchair
20 program. Do you know if -- and you didn't generate a
21 report, right?

22 A. Not that I recall, no.

23 Q. Okay, that you remember. Do you know if
24 there was an after incident report that was generated
25 by anybody?

1 A. I believe Ms. Curry generated one.

2 Q. Okay. And did she include any of your
3 findings in that report?

4 A. She probably did.

5 Q. Have you seen it?

6 A. I don't recall if I did or not.

7 Q. Do you say that you believe she did it
8 because after action reports are customarily done
9 when you do an after action review?

10 A. Yes.

11 Q. And there would be no reason why she
12 wouldn't have done one?

13 A. No, there wouldn't be a reason why.

14 Q. Where are those kept?

15 A. That, I don't know. Probably -- the after
16 action report usually goes to the warden of the
17 facility, and probably to the deputy director of the
18 department.

19 Q. You said you do after action reviews in
20 cases of major incidents. When there are crimes
21 charged and there is a law enforcement agency
22 investigating, as in this case, when there is a
23 murder, does that after action report go to that law
24 enforcement agency?

25 A. I don't know.

1 Q. Do you know if there is a policy that
2 governs that?

3 A. That, I don't know either.

4 Q. Do you know if the after incident review
5 gets sent to the ACA for accreditation purposes?

6 A. I wouldn't be able to answer that. I don't
7 know.

8 Q. You don't deal with that process?

9 A. No, I don't.

10 MS. FOX-YOUNG: Thank you, Your Honor.
11 Pass the witness.

12 THE COURT: Thank you, Ms. Fox-Young.

13 Any other defendants have questions of
14 Mr. Vigil before the Government engages in
15 cross-examination?

16 MR. LOWRY: Your Honor, just briefly.

17 THE COURT: Mr. Lowry.

18 EXAMINATION

19 BY MR. LOWRY:

20 Q. Good afternoon, Mr. Vigil.

21 A. Good afternoon.

22 Q. Mr. Vigil, after the Molina -- after March
23 7, after you went down to Southern, you returned back
24 to Santa Fe?

25 A. Yes.

1 Q. How many days were you in Las Cruces?

2 A. I don't remember. It's been a while.

3 Maybe one, maybe two days.

4 Q. Do you recall an event where you and the
5 Secretary of Corrections and a film crew went and
6 spoke with Mr. Baca, Mr. Sanchez, and Mauricio Varela
7 before they were sent out of state?

8 A. No.

9 Q. You don't recall that?

10 A. I was not part of that.

11 Q. Okay. Do you recall participating in a
12 video of the other alleged members of the SNM that
13 were housed in Level 6?

14 A. No.

15 Q. You don't recall that?

16 A. I don't recall video cameras being there.
17 I know that was with Mr. Marcantel and one of the
18 units, and he was explaining why the SNM members were
19 housed at the north facility.

20 Q. Do you recall the Secretary explaining to
21 that group of people his discharge of Mr. Baca, Mr.
22 Sanchez, and Mr. Varela?

23 A. I know that he referred to suspects. I
24 don't remember him mentioning them by name.

25 Q. Do you recall a comment that the Secretary

1 made that they were crying when they left?

2 A. No. That, I do not recall.

3 Q. So you don't recall being with him when he
4 was with those three gentlemen when he addressed
5 them?

6 A. I wasn't there for the meeting with the
7 three gentlemen.

8 MR. LOWRY: Okay. No further questions,
9 Your Honor.

10 THE COURT: All right. Thank you, Mr.
11 Lowry.

12 Any other defendant?

13 All right. Ms. Armijo, if you wish to
14 cross-examine Mr. Vigil.

15 EXAMINATION

16 BY MS. ARMIJO:

17 Q. Mr. Vigil, do you know what was on the
18 video that Ms. Fox-Young was referring to that you
19 took up there?

20 A. I knew it was about the incident that
21 occurred in the pod.

22 Q. All right. So was it your understanding
23 that that was a video of the actual murder?

24 A. Yes.

25 Q. And the interview that you were referring

1 to with Mr. Armenta, did that take place after Mr.
2 Armenta had been charged by the state?

3 A. Yes.

4 Q. And was it in reference to him being a
5 possible witness?

6 A. Yes.

7 MS. ARMIJO: And I believe that is all I
8 have. Thank you.

9 THE COURT: All right. Thank you,
10 Ms. Armijo.

11 Any other defendants have any further
12 redirect? Ms. Fox-Young?

13 MS. FOX-YOUNG: No, Your Honor.

14 THE COURT: All right. Mr. Vigil, you may
15 step down. Is there any reason that Mr. Vigil cannot
16 be excused from the proceedings?

17 MS. ARMIJO: No, Your Honor.

18 THE COURT: Ms. Fox-Young?

19 MS. FOX-YOUNG: No, Your Honor.

20 THE COURT: All right. You're excused from
21 the proceedings. Thank you for your testimony.

22 All right. Mr. Villa, do you have further
23 witnesses or evidence that Mr. Perez wants to
24 present?

25 MR. VILLA: Yes, Your Honor, Mr. Perez

1 calls Jason Wright.

2 MR. CASTELLANO: Your Honor, may we
3 approach regarding Mr. Wright?

4 THE COURT: You may.

5 All right. We're going to do it in open
6 court.

7 MR. CASTELLANO: My understanding is that
8 Mr. Wright is a former SNM member. I don't think
9 he's represented by counsel, so I just want to make
10 sure we tread lightly before we put him on the stand,
11 because he can be subject to potential criminal
12 liability. I don't know what they're going to ask
13 him. Mr. Villa gave me a little preview.

14 But if he's talking about shanks coming
15 from the wheelchair program, there is potential
16 criminal liability. And I want to say that before
17 he's in the courtroom, so I don't influence his
18 testimony in any way. But I just want to make sure
19 that we know what we're doing when we put him on the
20 stand.

21 THE COURT: Your thoughts, Mr. Villa?

22 MR. VILLA: Well, Your Honor, I don't
23 intend to ask him about anything that he, himself,
24 did directly, but more the knowledge that he had. I
25 don't know what cross-examination the United States

1 has. But, you know, I think with respect to
2 questions that might relate to self-incrimination, we
3 probably have to take them a question at a time.

4 THE COURT: Well, I'm sure y'all would
5 agree with me, I'm not sure any of us want to be the
6 ones making the call.

7 MR. VILLA: I certainly can't do that for
8 him, Your Honor.

9 THE COURT: Yeah. I guess what I'm
10 concerned about is, I'm running out of quickly
11 available lawyers to come over here.

12 MR. VILLA: Across the street.

13 THE COURT: Well, I'm dipping pretty deep
14 into El Paso. Let me ask this: Can I work with
15 Ms. Wild to see if I can get an attorney for him and
16 then we come back to Mr. Wright at another point?

17 MR. VILLA: I think that's fine, Your
18 Honor. That was the last of the witnesses Mr. Perez
19 intended to call -- oh, I'm sorry, there is one more.
20 Oops. But we could move on to the next witness, Your
21 Honor.

22 THE COURT: Ms. Wild, are you still on the
23 phone?

24 THE CLERK: She's away from her desk.

25 THE COURT: All right. Well, let's move

1 forward, and let me see if I can contact her. I
2 hadn't gotten a response to one question I had asked
3 her a little earlier, so I don't know if she's
4 quickly available. But let's move on to your next
5 witness, and let me see if I can get an attorney
6 appointed for Mr. Wright.

7 MR. VILLA: Yes, Your Honor. And that's
8 Ms. Fox-Young's witness.

9 THE COURT: All right. Ms. Fox-Young.

10 MS. FOX-YOUNG: Your Honor, Mr. Perez calls
11 Laura Schile.

12 LAURA SCHILE,
13 after having been first duly sworn under oath,
14 was questioned and testified as follows:

15 DIRECT EXAMINATION

16 THE CLERK: Please be seated. State your
17 name, spelling it for the record.

18 THE WITNESS: Thank you. My name is Laura
19 Schile, S-C-H-I-L-E.

20 THE COURT: Ms. Schile. Ms. Fox-Young.

21 BY MS. FOX-YOUNG:

22 Q. Ms. Schile, could you tell the Court what
23 your educational background is?

24 A. I am -- well, absolutely. I have a
25 bachelor's degree from St. Mary College in

1 Leavenworth, Kansas. Would you like me to go on with
2 my career?

3 Q. Yes, go on.

4 A. From there, I started graduate school in
5 microbiology at the University of Kansas. I did not
6 finish. But I was recruited to do DNA breakage and
7 repair research at the University of Texas, M.D.
8 Anderson. After about three years of performing DNA
9 breakage and repair research as a molecular biologist
10 for M.D. Anderson, I started with the Texas
11 Department of Public Safety, when DNA -- STR DNA just
12 started up in the forensic field. They wanted to get
13 molecular biologists and train them to be forensic
14 scientists. So that's when I started my career as a
15 forensic scientist.

16 I was trained in hair comparison, serology,
17 DNA, crime scenes, blood spatter, evidence handling
18 procedures, all by the Texas -- and hair
19 comparisons -- all by the Texas Department of Public
20 Safety. I was stationed in Houston.

21 After approximately five-and-a-half years,
22 I went to the Oklahoma City Police Department and got
23 that crime laboratory on line with DNA. I wrote --
24 in this whole process I was writing protocols and
25 procedures, as well as doing casework, crime scenes,

1 DNA analysis. So I started the DNA laboratory in --
2 for the Oklahoma City Police Department. I was with
3 them for approximately 23 months. Then I resigned
4 and went to work for the Oklahoma Indigent Defense
5 System. I was with them for approximately nine
6 years, at which time, in the middle of that, I
7 started my own business. Then, in 2010, I went
8 full-time with my own business as a forensic
9 consultant.

10 Q. Okay. And since that time, you have been
11 proffered as an expert in other cases, and we have
12 proffered you as an expert in this case?

13 A. That's correct.

14 Q. And you have listened to the testimony in
15 the hearing on this motion. What else have you done,
16 generally speaking, to prepare as an expert in this
17 case?

18 A. I've reviewed numerous documents, numerous
19 pages. I have gone on several site visits. I have
20 reviewed -- I've viewed evidence in this case.

21 Q. And have you reviewed the video evidence
22 that has been admitted, taken in the pod on March 7,
23 2014?

24 A. Yes, I have.

25 Q. And you have reviewed the statement by Mr.

1 Perez?

2 A. Yes.

3 Q. And you've reviewed all the exhibits that
4 have come into evidence in the course of this
5 hearing?

6 A. Yes, I have.

7 Q. In the course of your review of the
8 video --

9 MS. FOX-YOUNG: Your Honor, in the
10 interests of time, I'm not going to go through
11 proffer her as an expert and getting her qualified
12 unless the Government is going to object, and we can
13 go through in detail. But I know the Court would
14 like to streamline some of these matters.

15 THE COURT: Any objection --

16 MR. BECK: No, Your Honor.

17 THE COURT: -- to her offering opinion
18 testimony? It doesn't sound like it. Anyone else?

19 MR. BECK: Not for purposes of this
20 hearing.

21 THE COURT: Anyone else? All right. So
22 Ms. Schile will be allowed to offer opinion
23 testimony.

24 BY MS. FOX-YOUNG:

25 Q. Ms. Schile, you reviewed the video that was

1 collected in this case. Can you tell me how long it
2 is?

3 A. One is approximately -- on my computer,
4 what it reads -- 35 minutes and 17 seconds; one is 35
5 minutes and 50 seconds --

6 Q. Okay. So --

7 A. -- approximately.

8 Q. And both of those videos were produced.

9 And you made some site visits in this case
10 as well, did you not?

11 A. That is correct, yes.

12 Q. Where have you visited?

13 A. Southern; several locations within the
14 Southern. And I believe Central or -- I apologize.

15 Q. PNM?

16 A. PNM.

17 Q. Okay. Did you visit the wheelchair program
18 at Southern?

19 A. Yes, twice.

20 Q. And did you visit the pods that we've been
21 discussing today, 1 A and 1 B?

22 A. Yes, blue pod and yellow pod.

23 Q. And the video that you reviewed, is 35
24 minutes, that's in evidence, that was taken from blue
25 pod?

1 A. Yes.

2 Q. And that's Exhibit RP-C.

3 I'm going to show you Defendant's Exhibit

4 N. Do you know what this is?

5 A. That's a photo within blue pod.

6 Q. Okay. And do you know who took this photo?

7 A. I believe I took this photo.

8 Q. And does the photo depict the cameras that
9 picked up the video that's Exhibit C?

10 A. Yes.

11 Q. And that is here, here, and here?

12 A. There are three cameras, but we were
13 informed that one was not working.

14 Q. Okay. And the two cameras that were
15 working, did they reveal in the video all the cells
16 in the pod?

17 A. Yes.

18 Q. I'm going to show you Defendants RP-P.
19 It's a little hard to see on the Elmo. But this cell
20 right here, can you read the number on that cell?

21 A. It appears to be 115.

22 Q. 115. And do you know where Rudy Perez was
23 housed in this pod?

24 A. I believe it was 115.

25 Q. And is that cell clearly visible on the

1 video that you reviewed?

2 A. Yes, it is.

3 Q. And can you also see the doors located in
4 the upper right and the lower right on the video?

5 A. Yes, you can.

6 Q. And the same is true with respect to the
7 other side of the pod? Can you see all the way to
8 the doors?

9 A. That's correct.

10 Q. And those doors are the doors -- I mean,
11 you inspected the scene there. Are those doors the
12 doors that lead into the neighboring pod?

13 A. Yes, they are.

14 Q. Okay. Is that yellow pod, as is referred
15 to in this case?

16 A. Yes.

17 Q. Okay. And so you could see on the video
18 the four doors in blue pod as --

19 A. Yes.

20 Q. -- in full?

21 A. Yes.

22 Q. And there is direct -- would you say there
23 is direct line of sight into cell 115 on the video?

24 A. Yes. I mean, you can see that cell in that
25 video quite clearly. Well, as clearly as any of the

1 cells in the video.

2 Q. And the video starts -- I know you've
3 watched it; you know the length of it. You know what
4 it records. And you've heard testimony earlier today
5 about it starting just before the homicide occurs; is
6 that right?

7 A. Yes.

8 Q. In your expert opinion -- and you've worked
9 on numerous crime scenes; is that right?

10 A. That is correct.

11 Q. If you were working on reviewing this crime
12 scene and collecting evidence, knowing the evidence
13 that is in the record, would you have collected
14 earlier video footage?

15 A. Absolutely.

16 Q. And why is that?

17 A. For some of the allegations that have been
18 made in statements. One of the things -- working out
19 of the Texas Department of Public Safety, or the
20 Oklahoma City Police Department, one of the things
21 we're trained in is that if statements were made,
22 then you go out of your way to do everything you can
23 to corroborate or not corroborate the statements.
24 And so it would be very important to be able to view
25 what the statements are alleging.

1 Q. Based on the evidence in this case, and the
2 timeline in this case that you've reviewed and heard,
3 how much video would you preserve in order to
4 investigate those allegations?

5 A. Well, I would think in the least you would
6 want to do 48 hours. But I think that what I would
7 do, if I had been doing the crime scene and
8 collecting it, I would have collected to the point
9 that the statement said that information was coming
10 in, and you could see it on the video. And then I
11 would also have collected it throughout the crime
12 scene, to have a video documentation of the crime
13 scene.

14 Q. So you're talking about the allegations
15 about paperwork, you'd want to capture that?

16 A. Yes.

17 Q. Okay. And in the course of your work on
18 this case, you said you visited the wheelchair
19 program. Did you photograph the wheelchair program?

20 A. Yes. Both times I visited, I did photo
21 documentation.

22 Q. You visited twice. And tell me what you
23 observed the first time.

24 A. It was a room with several tables, and I'd
25 say numerous and various pieces of wheelchairs in

1 there at some point in their lifespan, either
2 completely put together or partially put together.

3 Q. I'll show you what has been marked as
4 Defendant's Exhibit H. Is this a photograph of the
5 wheelchair program?

6 A. Yes, it is.

7 Q. Now, does this capture everything that was
8 in the room where the wheelchair program was housed?

9 A. No, it certainly doesn't.

10 Q. Okay. And this visit was made when? In
11 December of 2016; is that right?

12 A. Yes, I believe so.

13 Q. And you can see -- although it doesn't
14 capture the whole room, you can see some shelving
15 with materials on it. Did you inspect that area?

16 A. Yes. So there is shelving with various
17 parts of wheelchairs, wheelchairs in whole. There is
18 also shelving containing containers -- actual
19 containers that hold parts of wheelchairs.

20 Q. Okay. And other pieces of metal --

21 THE COURT: Hold on. Is that Ms. Wild?

22 THE CLERK: Yes, sir.

23 THE COURT: The witness that Mr. Perez
24 wants to call, Jason Wright, is a former SNM Gang
25 member, or an SNM Gang member. And we're a little

1 concerned that he may need an attorney to advise him
2 about testifying. Any thoughts?

3 THE CLERK: My thoughts are I'm going to
4 have to take a look and see what's available. And
5 I'll just have to look into it just a bit.

6 THE COURT: All right. If you don't mind
7 beginning that process, I'd appreciate it.

8 THE CLERK: I don't. Do we know when he is
9 going to testify?

10 THE COURT: Well, we were going to call him
11 a minute ago. But we've moved on to Mr. Perez'
12 expert. So we're buying some time right now for you.

13 THE CLERK: All right. I'll see what I can
14 do.

15 THE COURT: Thank you.

16 THE CLERK: Sure.

17 THE COURT: Ms. Fox-Young.

18 MS. FOX-YOUNG: Thank you, Your Honor.

19 BY MS. FOX-YOUNG:

20 Q. So you visualized various kinds of metal, I
21 think you were describing in the wheelchair program
22 on that visit?

23 A. Yes, I did. And there were -- on the table
24 there were nuts and bolts out -- well, nuts and
25 bolts.

1 Q. Okay. And then you visited again?

2 A. Yes, I did.

3 Q. And what did you see that time?

4 A. It was quite different. It was not as
5 clean. There was a lot more equipment present. I
6 believe I visited in June. There was a lot more
7 equipment present. There were not only wheelchairs,
8 but there were numerous walkers as well.

9 Q. There were walkers the second time, but not
10 the first time?

11 A. That is correct.

12 Q. And the first time everything was pretty
13 cleaned up and tidied up?

14 A. Yeah, it was pretty pristine. The second
15 visit, not so much.

16 Q. And you say walkers, were they -- this is
17 Defendant's RP-NN, and this is appears to be a walker
18 with wheels on it. Were they walkers like this, with
19 seats and wheels? Or can you describe what they
20 looked like?

21 A. Many of them had seats or an area to sit
22 down. Wheels, possible brake mechanisms on the
23 handles. So many of them looked very similar to
24 that.

25 Q. Okay. And you also went to view the

1 evidence in this case, did you not?

2 A. Yes, I did.

3 Q. And you photographed it?

4 A. Yes, I did.

5 Q. This is Defendant's RP-W. Do you recognize
6 this picture?

7 A. Yes, I do.

8 Q. What is this?

9 A. That is a picture of what was represented
10 to me as three of the shanks that were found in blue
11 pod.

12 Q. This is Defendant's RP-V. What is this?

13 A. That is a picture that I took that
14 represents -- or that photo documents four of what
15 was represented to me as the shanks found in the blue
16 pod.

17 Q. Okay. And were you able to examine these
18 materials?

19 A. Yes, I was.

20 Q. Now, you weren't able to test their metal
21 component or anything, were you?

22 A. Oh, no. Just by examining photo document,
23 is all I was able to do.

24 Q. And this photograph here shows them next to
25 boxes. Are these the evidence collection boxes that

1 Agent Palomares testified about?

2 A. Yes. I am assuming that those are the same
3 boxes.

4 Q. I'm going to show you Defendant's RP-W
5 again. You've heard testimony that, allegations that
6 a shank used to kill Javier Molina came from a walker
7 that was Rudy Perez', right?

8 A. Yes.

9 Q. And you went and you inspected -- you
10 viewed the evidence in this case; you looked at what
11 are the purported shanks that were recovered?

12 A. Yes, I did.

13 Q. And can you tell, in viewing them, what
14 they came from?

15 A. Oh, no, I wouldn't be able to do that.

16 Q. Can you tell if they are all the same
17 material?

18 A. No. I wouldn't purport to be able to tell
19 you that.

20 Q. And your photograph looking at them pretty
21 close-up shows that one of them appears to be,
22 perhaps, rusted or dirty, can you tell what that is,
23 aged. Do you know?

24 A. I do not know.

25 Q. Okay. Now, you've heard a lot of talk

1 about this walker that doesn't seem to exist anymore,
2 but perhaps existed at one time. And it's not in
3 evidence. And you have viewed all the physical
4 evidence in this case; is that right?

5 A. Yes. When I was there, I asked if that was
6 everything. And I was instructed that, in fact,
7 everything that I had viewed was every piece of
8 evidence in the case. So, going on that, yes, I will
9 say that I viewed all the evidence in the case.

10 Q. And there was no walker there.

11 Now, if there were a walker that had been
12 preserved, a walker that the Government alleges
13 belonged to Rudy Perez, what forensic analysis, what
14 testing would you want to do with respect to these
15 shanks, these pieces, to see if it, in fact, came
16 from that walker?

17 A. I think that forensic tool mark analysis
18 would be done. I think it would be sent to the
19 forensic trace department.

20 Q. And would that be done in comparison to the
21 walker, or can it be done in isolation, with no
22 walker?

23 A. No. You would most definitely need the
24 walker to do a comparison-type forensic examination.

25 You could also do metallurgy.

1 Q. And what else would you want to do in order
2 to explore possible theories that the pieces didn't
3 come from the walker? What else would you do to rule
4 that out?

5 A. Well, I think your main thing would -- your
6 main forensic disciplines would consist of trace
7 analysis, which would consist of tool mark
8 comparisons. And, again, metallurgy are
9 possibilities.

10 Q. Okay.

11 A. And you can also do, you know, depending on
12 what you're looking at -- obviously, there is other
13 trace analysis, as well as DNA analysis.

14 Q. But you can't do any of that because you
15 don't have the walker itself.

16 Now, what we do have are photographs that
17 the Government purports are of a walker that was
18 seized. Now, do these photographs tell you, for
19 purposes of your analysis, how big this walker is?

20 A. There are no scales on any of the pictures
21 that I have seen, no scales whatsoever. So there is
22 no way of knowing how -- the size of that.

23 Q. Okay. Do they tell you what the metal
24 component is, what it's made of?

25 A. No. There is no brand, make, model, serial

1 number, there is no identifying marks that would help
2 get the information needed to be obtained.

3 Q. Okay. And then all the documents you've
4 reviewed, all the discovery in this case, you've not
5 seen a report that does include those
6 characteristics: Measurements?

7 A. I have not found anything like that.

8 Q. And so, in your opinion, is there any way
9 to determine, based upon the shanks themselves and
10 these photographs, whether they came from this
11 walker?

12 A. No. In my opinion, you would absolutely
13 need the walker to do the comparison to, to be able
14 to answer a question like that.

15 Q. Okay. And you're also trained in evidence
16 collection and preservation. And you've talked about
17 that with regard to the video. How, just according
18 to standard practices, not necessarily the local
19 practice, how should a walker in this case have been
20 taken into evidence, and examined and preserved?

21 A. Well, it would be taken into evidence. It
22 would be packaged. And then, if it goes on for photo
23 documentation, then the proper photo documentation
24 with proper scales, 90 degree photos, you can get an
25 idea of size.

1 But, initially, you would take that in; you
2 would write a case number, initials, and then make
3 sure that it immediately gets -- or it gets into a
4 secured storage evidence area. And then submit it to
5 the laboratory.

6 Q. And have you seen any documentation that
7 demonstrates proper chain of custody for this item in
8 Defendant's NN?

9 A. No, I have not.

10 Q. Okay. And how about for the photo? Is
11 there any documentation whatsoever as to who took the
12 photo, and where the item photographed was held?

13 A. No, not that I have received.

14 Q. Okay. I think you have heard -- it's not
15 testimony from the Government, but claims from the
16 Government that there is a perfect fit: Using the
17 shanks, which you photographed and apparently the
18 photo of the walker itself, the Government claims to
19 have established that those pieces of metal fit
20 perfectly into this item, and so it's clear that they
21 came from it. Do you know how anybody could properly
22 say that they fit perfectly, given these photos?

23 A. I honestly have no idea how anybody would
24 have been able to make any sort of match, let alone
25 that statement, without having the walker and the

1 pieces of metal in the same room, or at least sizes,
2 and make and model number.

3 Q. Okay. And you've also -- have you reviewed
4 any policies of the New Mexico Corrections
5 Department, State Police, in this case?

6 A. Yes, I have.

7 Q. And what is your opinion as to whether or
8 not the New Mexico Corrections Department followed
9 their policies in terms of preserving evidence?

10 A. In my opinion, they have not followed the
11 protocols and procedures that they have in place.

12 Q. In what ways have they failed to follow
13 those protocols and procedures?

14 A. For example, the wheelchair is on the
15 screen. There is no name of who took this photo, the
16 time, the date, where it was taken, the walker
17 itself. There is no evidence log. There is -- in
18 their protocols and procedures there is a designated
19 evidence custodian that is supposed to not only
20 secure the chain, but also make sure that the
21 appropriate paperwork is filled out. And there is no
22 evidence custodian listed in any paperwork that I
23 have seen, nor is there any evidence logs that should
24 have been filled out by the said evidence custodian,
25 per protocol.

1 Q. Okay. And the walker itself was not
2 preserved, we've heard that; don't know where it is
3 today; don't know when it was destroyed. But can you
4 tell the Court in your expert opinion what is the
5 standard practice for evidence preservation on an
6 item like this in a homicide case?

7 A. On something like -- well, any item of
8 evidence, in my experience in a homicide case, is --
9 as far as how long it's preserved? Is that the
10 question?

11 Q. Yes, how long should it be preserved?

12 A. It would be preserved until -- well,
13 forever, essentially, until the -- all parties
14 have -- are deceased, or that litigation has
15 completely stopped.

16 Q. And when I say an "item like this," I mean
17 a potential source of a murder weapon. It is your
18 opinion that that should be preserved until the
19 conclusion?

20 A. It is my experience that items such as
21 this, such as a potential murder weapon, is held and
22 stored indefinitely, if you will.

23 Q. And have you ever seen a homicide case
24 where a potential source of a murder weapon was not
25 preserved? Was photographed and then not preserved?

1 A. Not photographed and not preserved. But it
2 is not something that I have seen common, no.

3 MS. FOX-YOUNG: Your Honor, I'll pass the
4 witness.

5 THE COURT: Let me ask everybody if we
6 could do what we did, I think, last week. We're kind
7 of at an odd break time. But Ms. Bean and I just
8 finished up a jury trial last night, then I drove
9 down here. So I don't want to wear her out. If I
10 get the men to just stay in their place, I'll sit
11 here too, none of us will move. Attorneys, you can
12 move around, but be coming back in as soon as
13 Ms. Bean rests her fingers just a little bit. I'd
14 like to get a little bit more done here. So we'll be
15 in recess for about 15 minutes. The men can hang
16 with me. I'll sit here at the bench as well. I
17 guess I should say the defendants. If the attorneys
18 want to drift out a little bit, they can. As soon as
19 Ms. Bean is ready to go we'll get back in here.

20 (The Court stood in recess.)

21 THE COURT: Let's try to get back in our
22 seats here. Look around, make sure everyone has got
23 an attorney. Everyone got an attorney?

24 Ms. Schile, I'll remind you you're still
25 under oath. Anybody want to ask Ms. Schile questions

1 before Mr. Beck does?

2 All right. Mr. Beck, if you wish to
3 cross-examine Ms. Schile, you may do so at this time.

4 EXAMINATION

5 BY MR. BECK:

6 Q. Ms. Schile, on your direct examination you
7 talked about -- you said you would have collected
8 video earlier; is that right, in this case?

9 A. Yes.

10 Q. I think you said you came to that
11 conclusion based on the allegations that were made?

12 A. I came to that conclusion based on the
13 statements that were made.

14 Q. And which statements were those?

15 A. For example, there was an interview on
16 March 14, followed up by a written report on March
17 17, that said at least twice, but I believe several
18 more times -- I don't have that right in front of me
19 -- "Go and look at the videos, you'll see it on the
20 video," a couple of times.

21 Q. And what are we looking for on those
22 videos?

23 A. People passing information from one pod to
24 another pod through a door.

25 Q. So that's related to the paperwork that you

1 were saying you would have got in these videos
2 earlier?

3 A. That's one thing.

4 Q. Is there another thing?

5 A. Well, then, of course, to look at anything
6 that was going on with -- throughout the day of the
7 incident.

8 Q. So you would have wanted the videos from
9 the day, to see what was going on?

10 A. Absolutely.

11 Q. In the pod?

12 A. Yes.

13 Q. Now, did you put together a timeline in
14 this case of who knew what at what time?

15 A. No, I have not.

16 Q. You said, I think, you reviewed a lot of
17 documents in this case?

18 A. Yes.

19 Q. And you did site visits?

20 A. Yes.

21 Q. And then you reviewed evidence?

22 A. That's correct.

23 Q. And did you take a log of the evidence that
24 you reviewed?

25 A. I believe that everything I reviewed is on

1 a sheet of paper with my initials on it that one of
2 the detectives had.

3 Q. One of the detectives here today had?

4 A. I think it could have been Detective
5 Palomares. And I apologize for not saying his name
6 right.

7 Q. That's all right. So the evidence you
8 reviewed, I'm guessing you're talking about the
9 physical evidence that you reviewed at Southern?

10 A. No, this was physical evidence that I
11 viewed at the State Police here in Las Cruces.

12 Q. Okay. So when you talked earlier about the
13 evidence you reviewed, that was the physical evidence
14 you reviewed here with the State Police?

15 A. Yes, that's correct.

16 Q. Do you have a log of the documents that you
17 reviewed?

18 A. No, I do not.

19 Q. Okay. When you said that you reviewed the
20 tape about the allegations about the paperwork, in
21 what you reviewed and what you heard today, Detective
22 Palomares didn't know about the paperwork after the
23 incident, did he?

24 A. According to one of the correctional
25 officers, he did.

1 Q. According to Agent Palomares, did he?

2 A. Yes -- no, I'm sorry. What I'm saying is
3 that one of the corrections officers that we heard
4 today said that he gave the detective all of the
5 notes that he had. And, of course, that 14th and
6 17th of March statement was one of the memos that he
7 was referring to.

8 Q. Agent Palomares today said he didn't know
9 about it, didn't he?

10 A. That's what I -- I believe that he did not
11 say that he didn't know about it. I believe he said
12 that he found out about it in 2015. My recollection
13 of testimony. And I apologize if that is incorrect,
14 but that's what I recollect.

15 Q. Fair enough. Now, Exhibit W, which I can't
16 seem to find here. Give me a moment. You testified
17 about this picture on direct examination with
18 Ms. Fox-Young, right?

19 A. Yes, I did.

20 Q. And as I'm looking down at the bottom of
21 that picture, it appears to me that those two left
22 pieces of metal have threads on them. Is that what
23 it looks like to you?

24 A. Yes. Certainly, the middle piece is
25 threaded. And it does appear that there might be

1 demarcations of what could be threads on the left
2 piece from this picture.

3 Q. And you saw those when you viewed evidence
4 with the New Mexico State Police, like you were
5 saying?

6 A. Yes, that is correct.

7 Q. And did they have threads on them?

8 A. Yes.

9 Q. And you'd agree with me that you
10 reviewed --

11 THE COURT: Hold on, Mr. Beck. Somebody on
12 the phone doesn't have their mute button on. If
13 you'll put your mute button on. We're getting a lot
14 of feedback. Thank you.

15 Mr. Beck.

16 Q. In the testimony you reviewed from Mr.
17 Perez, he said that a piece of his walker was taken
18 out, right?

19 A. Yes.

20 Q. And you heard testimony today that I think
21 one of the correction officers said he said a piece
22 of his walker was taken out with nuts and bolts,
23 right?

24 A. Did he say that that's what Mr. Perez said,
25 or that's what the shakedown people said?

1 Q. I believe the testimony was that's what Mr.
2 Perez said.

3 A. Okay. If that's the testimony, then -- I
4 was under the impression that it's what the shakedown
5 people reported.

6 Q. Okay. In either case, if that's the
7 testimony, that's fine. You'd agree with me that it
8 would be helpful to you to compare those threads with
9 Mr. Perez' walker, right?

10 A. With the threads?

11 Q. The threads on this shank, or this piece of
12 metal here, in Exhibit RP-W, it would be helpful to
13 compare those threads to the threads on Mr. Perez'
14 walker?

15 A. Yes. Or it would be helpful to be able to
16 compare those pieces.

17 Q. Right. That would be helpful to you?

18 A. Yes.

19 Q. Why would that be helpful?

20 A. Because that's only way to know if -- that
21 would be the only way to be able to do a tool mark
22 comparison or to even do a size comparison.

23 Q. What would that tool marker size comparison
24 tell you, if you're able to do that?

25 A. If those pieces could even fit into an

1 unknown area of where a piece is supposed to have
2 been missing.

3 Q. In this case, if you took those pieces and
4 compared them with Mr. Perez' walker, what would that
5 tell you?

6 A. Well, I can't tell you what it would tell
7 me. I could say what it could tell me.

8 Q. Okay.

9 A. It could tell me whether those pieces were
10 a possibility for having been associated with that
11 walker at some point, or whether those pieces were
12 not forensically associated with that walker at some
13 point.

14 Q. And through those tests, that's the only
15 way you could tell that; you said that earlier,
16 right?

17 A. In my opinion, that's correct.

18 Q. And you didn't perform those tests?

19 A. No, sir, I did not.

20 Q. You'd agree with me that, if they did fit
21 in Mr. Perez' walker, under those two tests, that
22 would be evidence that those came from Mr. Perez'
23 walker, right?

24 A. It would be an indication that they
25 possibly came from the walker. It would not be an

1 indication of a certainty.

2 Q. Okay. So even if we had the walker, you
3 couldn't tell for certain that those came from Mr.
4 Perez' walker? Is that what you're saying?

5 A. That is correct. If you did metallurgy,
6 and added some tests, then the possibility would go
7 up, or down. But that's correct.

8 Q. Did you do metallurgy tests on these pieces
9 in Exhibit RP-W?

10 A. No.

11 Q. Did you do metallurgy tests on Mr. Perez'
12 walker?

13 A. I've never seen the walker. I've only been
14 told that one exists.

15 Q. So is that a no?

16 A. Pardon me?

17 Q. Is that a no, you didn't do those tests on
18 Mr. Perez' walker?

19 A. That is correct.

20 Q. And just to follow up on that, you'd agree
21 with me, if you did those tests, those metallurgy
22 tests on those pieces and on Mr. Perez' walker, and
23 those matched, that would indicate that those pieces
24 of metal came from his walker?

25 A. That could be a possibility, yes.

1 Q. And that would corroborate his statements
2 that you reviewed, in which he said it came from his
3 walker; is that right?

4 A. It certainly could.

5 Q. Could it not corroborate his statements, if
6 it was the same metal?

7 A. It can be the same metal and not fit. I
8 mean, other aspects -- again, it would be a series of
9 things.

10 Q. Right. I'm not asking about that. We can
11 move on.

12 A. Okay.

13 Q. So I just want to be clear. You don't know
14 what size walker Mr. Perez' walker was, right?

15 A. No, sir, I don't.

16 Q. And you don't know what metals Mr. Perez'
17 walker was made out of?

18 A. I do not.

19 Q. And you don't know what metals, those
20 pieces, the shanks we saw, were made out of the?

21 A. I do not.

22 Q. So you'd agree with me that, at this point,
23 it's indeterminate whether those shanks came from Mr.
24 Perez' walker, in your expert opinion?

25 A. I cannot determine that, that's correct.

1 Q. Now, did you ever -- in your involvement in
2 this case, did you ever tell the State Police to
3 preserve Mr. Perez' walker?

4 A. No, I did not.

5 Q. Did you ever tell the New Mexico
6 Corrections Department to preserve Mr. Perez' walker?

7 A. No, sir, I did not.

8 Q. Did you, in the documents you reviewed, see
9 an instance in which someone told STIU or the New
10 Mexico Corrections Department to preserve Mr. Perez'
11 walker?

12 A. I apologize. Did I see a memo in regard --
13 did I see anything regarding --

14 Q. A request to preserve Mr. Perez' walker?

15 A. No, I did not.

16 Q. And that goes to anyone. Did you see a
17 request to anyone to preserve Mr. Perez' walker?

18 A. Protocol would say that, if it was
19 collected, then it is preserved. So insofar as
20 reviewing two protocols, the State, and then the New
21 Mexico Corrections facility --

22 Q. I don't want to cut you off.

23 A. Okay.

24 Q. My question was: Did you see, in the
25 documents you reviewed, a request to preserve Mr.

1 Perez' walker?

2 A. Well, in my opinion, the protocol is -- I
3 mean, you follow your protocol. So a request from a
4 named single individual, no. But as far as following
5 a protocol, then, yes. If that makes sense.

6 Q. Not quite. I think I understand what
7 you're saying. But I guess -- let me better phrase
8 my question. Did you see a request in the documents
9 you reviewed from a person to another person or
10 entity asking to preserve Mr. Perez' walker?

11 A. No, sir, I did not.

12 MR. BECK: Pass the witness, Your Honor.

13 THE COURT: All right. Thank you, Mr.
14 Beck.

15 Any defendant have any recross they want to
16 do?

17 All right. Ms. Fox-Young, do you have
18 recross of Ms. Schile?

19 MS. FOX-YOUNG: Thank you, Your Honor.

20 EXAMINATION

21 BY MS. FOX-YOUNG:

22 Q. Ms. Schile, the prosecutor asked you if
23 you -- why you might want to see the video evidence
24 from earlier in the day, before the portion that was
25 preserved. And you talked about the paperwork. Is

1 there anything else going on in the pod that day that
2 you would want to see, if you could go back in time
3 and look at the video from before the time it was
4 preserved? Would you want to look in any particular
5 cell?

6 A. Well, I think that it would be helpful to
7 know what's going on throughout the day in that pod.
8 Again, if certain statements have been made about
9 allegations or corroborating allegations, I think
10 that you always want to go and see if you can do
11 that.

12 Q. Okay. And specifically, the allegations in
13 this case that somebody went in to Rudy Perez' cell
14 and took a piece which was subsequently fashioned
15 into shanks and used in the murder, would the video
16 evidence from earlier in the day tell you anything
17 about that?

18 A. Absolutely. It would tell you who is going
19 in and out of, you know, cells; how people are
20 carrying themselves; if it appears that things are
21 getting carried in and out. All of that is a
22 possibility. I can't tell you anything for sure,
23 because there was no video of such. But I can say
24 what I would have hoped to have done, if I was doing
25 the crime scene.

1 Q. Right. And you told me for sure earlier
2 that there is direct line of sight from those cameras
3 into Rudy Perez' cell?

4 A. Yes, I did.

5 Q. Okay. The prosecutor asked you about
6 comparing these shanks to the walker, and asked you,
7 I think, if you could be certain that they came from
8 a walker, if we had the walker and you could compare
9 threads. And I think you said it would tell you
10 something, but you couldn't be certain.

11 If we had the walker, and you could examine
12 the walker, and you could order testing of the metal
13 pieces, these shanks and the walker, and do all the
14 other forensic testing that you described, or some
15 portion thereof, you could potentially exclude the
16 walker as a source of weapons; correct?

17 A. Oh, absolutely.

18 Q. Okay. And so, if we had the walker with
19 us, while you might not be able to definitely say
20 with absolute certainty the pieces came from it, you
21 could definite exclude it, given certain results.

22 A. I hate to use the word "definitely." Yes,
23 it's absolutely possible that you would be able to
24 exclude it.

25 Q. And I know you haven't done these tests.

1 And we don't have the walker here to test?

2 A. Yes.

3 Q. But the prosecutor asked you: You didn't
4 test the metal of these shanks. And if we had the
5 walker, you'd want to test -- would you want to test
6 the metal on the shanks?

7 A. Yes, absolutely. And the walker itself.

8 Q. Okay. And I won't have you recite all the
9 other things that you have told me and told the
10 Government that you'd want to do. But you have
11 already sort of run through that litany. And is one
12 of the reasons that you'd want to do that, to exclude
13 the walker as a source of weapons?

14 A. Yes, either include or exclude.

15 MS. FOX-YOUNG: Thank you, Your Honor. No
16 more questions.

17 THE COURT: All right. Thank you, Ms.
18 Fox-Young.

19 All right. Ms. Schile, you may step down.
20 Thank you for your testimony.

21 THE WITNESS: Thank you.

22 THE COURT: Well, we're working on getting
23 an attorney for Mr. Wright. We've got -- Ms. Wild
24 has got calls to three different attorneys. The one
25 I had in mind, she had in mind, doesn't look like he

1 can do it. So we're going to have to scramble.
2 They've all got telephone numbers, so if they get her
3 message, they can talk to her tonight. And we'll try
4 to get somebody in place.

5 But let's break for the evening. I
6 appreciate everybody's hard work. Everybody be safe
7 on their travels. And we'll see you in the morning.
8 Have a good evening.

9 (The Court stood in recess.)
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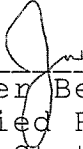
C-E-R-T-I-F-I-C-A-T-E

UNITED STATES OF AMERICA

DISTRICT OF NEW MEXICO

I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
Official Court Reporter for the State of New Mexico,
do hereby certify that the foregoing pages constitute
a true transcript of proceedings had before the said
Court, held in the District of New Mexico, in the
matter therein stated.

In testimony whereof, I have hereunto set my
hand on December 14, 2017.



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